

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 113.

GEORGE W. HARRISON, APPELLANT,

vs.

PEDRO PEREA, SURVIVING ADMINISTRATOR OF THE
ESTATE OF JOSE L. PEREA, SECOND, DECEASED.

FILED JANUARY 28, 1898.

No. 497.

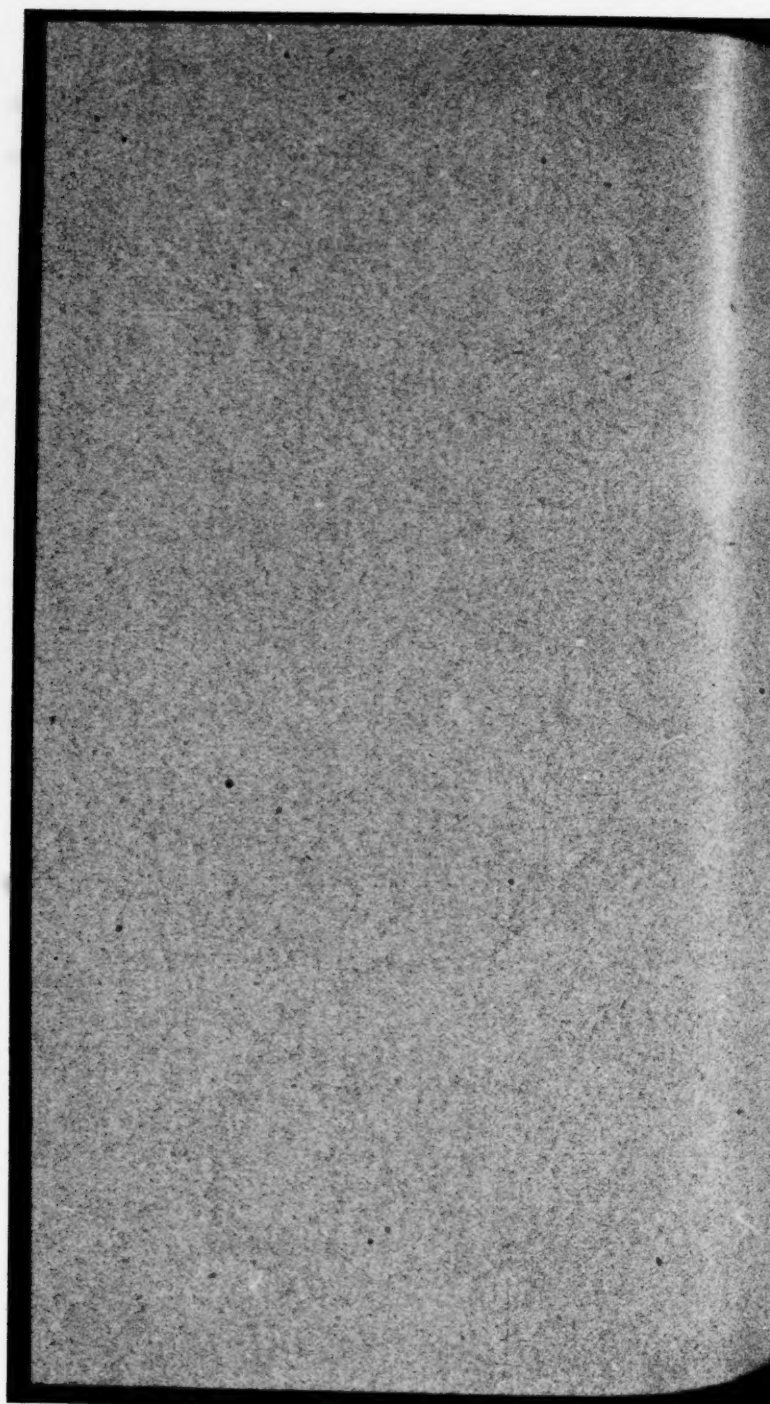
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APPEALS FROM THE SUPREME COURT OF THE TERRITORY OF
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(16,164.)

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1 & 2 Be it remembered that heretofore, to wit, on the 12th day of July, 1895, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a transcript of the record in a certain cause lately pending in the district court in and for the county of Bernalillo, in said Territory, wherein Pedro Perea, administrator, was complainant and George W. Harrison, administrator, *et al.* was defendant; which said transcript was and is in the words and figures following, to wit:

3 Be it remembered that heretofore, to wit, on the third day of April, A. D. 1890, there was filed in the office of the clerk of the district court of the second judicial district of the Territory of New Mexico, in and for the county of Bernalillo, in said district, a bill of complaint in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo, } ss:

In the District Court of the Second Judicial District, Sitting within and for the County of Bernalillo for the Trial of Causes Arising under the Laws of the Territory of New Mexico. In Chancery.

To the Honorable William D. Lee, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district thereof:

Pedro Perea, a resident of said county of Bernalillo and Territory of New Mexico, brings this bill of complaint in behalf of himself, as sole surviving administrator of the estate of Jose L. Perea, Second, late of said county, deceased, and as one of the heirs-at-law of the said Jose L. Perea, Second, deceased, against George W. Harrison, individually and as administrator of the estate of Guadalupe Perea de Harrison, late of said county, deceased, Jose L. Perea, Jesus M. Perea, Benicia F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo, Justo R. Armijo her husband, Soledad Perea de Castillo, and Justiniano Castillo her husband, Josefa Perea de Castillo, and J. M. Castillo her husband, Filomena Perea de Otero, and Mariano S. Otero her husband, Barbara Perea de Yrisarri, and Jacobo Yrisarri her husband, Grover William Harrison, a minor, all residents of said county of Bernalillo and Territory of New Mexico, and Cesaria Perea de Hubbell, and Sydney A. Hubbell her husband, of the city of Pueblo, in the county of Pueblo and State of Colorado.

4 And thereupon your orator shows unto your honor, that heretofore, to wit, on the 27th day of August, A. D. 1887, the said Jose L. Perea, Second, a minor about the age of eight years, departed this life at said county of Bernalillo, leaving said Guadalupe Perea de Harrison, his mother, then in life, and the complainant and the defendants Jose L. Perea, Jesus M. Perea, Benicio F. Perea, Mariana Perea, Jacobo Perea, Grover William Harrison, his brothers, Beatriz Perea de Armijo, Soledad Perea de Castillo, Josefa Perea de Castillo,

Filomena Perea de Otero, Barbara Perea de Yrisarri, Cesaria Perea de Hubbell, his sisters as his heirs-at-law.

That upon the 23rd day of July, A. D. 1884, the said Guadalupe Perea de Harrison, then in life, became the guardian of the property of said Jose L. Perea, Second, and went into possession and received control, as such guardian of the property and effects of Jose L. Perea, Second, and continued as such guardian, with possession and control as aforesaid, to the date of the decease of said Jose L. Perea, Second, on, to wit, the said 27th day of August, A. D. 1887.

Your orator shows that the effects and property of said Jose L. Perea, Second, going into the hands of his said guardian was personal property, consisting of good and solvent notes, money, bank
5 and other stock, sheep, chattels, and open accounts, payable to her as guardian of said Jose L. Perea, Second, amounting to thirty thousand dollars or other large sum.

That by a partial report made to the probate court of said county of Bernalillo and filed therein on the 6th day of July, A. D. 1886, by said guardian, through said George W. Harrison, her then husband, said guardian accounted for property of the estate of her said ward in the sum of eighteen thousand and three and $\frac{3}{100}$ dollars, and in and by said partial report represented to said court that all of the property of said ward in the said amount, "still exists and in safe place and condition" and "the interest well pays all expenses of said minor," to wit, the said ward, and your orator annexes hereto a copy of said report marked "Exhibit A" and prays leave of reference to the same whenever necessary.

And your orator avers and charges that said report did not show by a very large amount, to wit, the sum of twelve thousand dollars, the true amount of the assets and property of the said ward which had come into the hands of and has been received by said guardian, but that said guardian in and by said report, made through her then said husband, the said George W. Harrison, failed and omitted to account for various items of money and property which had come into the hands of said guardian, belonging to the estate of said ward, and which your orator charges remained in her hands as such guardian up to the date of the death of said ward, and afterwards up to the 20th day of October, A. D. 1889, upon which last-named day the said Guadalupe Perea de Harrison also departed this life, and your orator will hereinafter more particularly specify the items and amounts of property omitted from said report.

6 Your orator further shows unto your honor, that on the 1st day of September, A. D. 1887, your orator and the said Guadalupe Perea de Harrison, then in life, each applied for the grant of letters of administration upon the estate of said deceased minor, and the probate court of said county of Bernalillo, to which said applications were addressed, appointed your orator administrator, and the said Guadalupe Perea de Harrison, administratrix of the estate of Jose L. Perea, Second, deceased.

That your orator gave bond which was approved by said probate court, and afterwards, on, to wit, the 1st day of October, A. D. 1887, took and filed the oath required by law, as administrator of said

estate, and the said Guadalupe Perea de Harrison, also gave bond approved by said court, and afterwards, to wit, the 9th day of November, A. D. 1887, took and filed the oath required by law, as administratrix of said estate.

Your orator further shows and charges that notwithstanding the death of said minor, the termination of said guardianship and the appointment and qualification of your orator and said Guadalupe Perea de Harrison as administrator and administratrix respectively, as aforesaid, the said Guadalupe Perea de Harrison, under the influence and advice as your orator believes and charges, of her said then husband, the said George W. Harrison, pretended and claimed that she still held the property and effects of said deceased minor in her late capacity of guardian of said deceased minor, and so pretending and claiming and after your orator had fully qualified as such administrator and subsequent to the date of said Guadalupe Perea de Harrison having given bond as such administratrix, and immediately before the filing of her oath as such administratrix,

7 she, the said Guadalupe Perea de Harrison did, through and by her said then husband, the said George W. Harrison, file in the said probate court, on, to wit, the 7th day of November, A. D. 1887, the alleged "final report of Guadalupe Harrison, (meaning the said Guadalupe Perea de Harrison) of Jose L. Perea, Second, minor, now deceased" and averred in said alleged report that the letters of guardianship had not been revoked.

That in and by said alleged final report said Guadalupe Perea de Harrison admitted that there had been received by her as guardian of aforesaid property and effects of the said deceased minor to the amount of \$25,190.20 and that there was wool, 8,000 pounds, and stock in the Bernalillo Bridge Company of the sum of \$71.42 belonging to the estate of said deceased minor not then delivered to her, and your orator attaches a copy of said alleged final report to this bill, and marks the same "Exhibit B" and prays leave of reference thereto as often as may be necessary.

Your orator further avers and shows that after he became the duly qualified administrator and the said Guadalupe Perea de Harrison the duly qualified administratrix, of the estate of said deceased minor, and prior to the 6th day of March, A. D. 1886, he requested of said Guadalupe Perea de Harrison that he be recognized as such administrator, and that the assets and effects which she was then claiming and pretending yet remained in her hands in her capacity as guardian of said deceased minor, be by your orator and her, the said Guadalupe Perea de Harrison, duly administered and distributed as by law required to be done, and your orator charges that the said Guadalupe Perea de Harrison, acting, as your orator believes and charges to be the fact, under the advice and influence of her said then husband, the said George W. Harrison, refused to recognize your orator as such administrator, or to proceed

8 with the administration of the estate of said deceased minor, but instead continued to pretend and *and* claim that the said property and effects remained in her hand- in her late capacity of guardian as aforesaid, and so pretending and claiming she, the said

Guadalupe Perea de Harrison, as alleged guardian of a deceased ward, as aforesaid, did, on the 6th day of March, A. D. 1888, file a second alleged final report in and by which she claimed that she still held in said capacity of guardian, the property and effects of said deceased minor's estate and had as appears by said report subsequent to the date of said minor's death assumed to collect assets, money and dividends and interest belonging to said estate and to expend money of said estate and manage its affairs in her alleged capacity of guardian aforesaid and pretended in and by her alleged final report to account for an alleged balance that she, as said guardian pretended to hold on said 6th day of March, A. D. 1888, and your orator attaches hereto a copy of said alleged final report marked "Exhibit C" to which he prays leave of reference as often as may be necessary.

And your orator further shows unto your honor that said alleged final report pretended to give an itemized detailed statement of all moneys and other property received by said Guadalupe Perea de Harrison, from the time she qualified as such guardian in the year A. D. 1884, to the time of the death of said minor in August, A. D. 1887, and of sums and property pretended to have been received by her as such guardian after such death and after administration of the estate of said deceased minor had been duly and regularly granted to her and to your orator as aforesaid, and in and by said alleged final report charges against said estate were pretended to be claimed from a period long prior to the beginning of said guardianship and extending through the same and other charges accruing after the death of said deceased minor, all of which appears by an inspection of said alleged final report, annexed and marked "Exhibit C" as aforesaid. And your orator shows that the three said reports are all inconsistent with each other, and in and by the last it appears that sums and property which should have been accounted for in the former reports, were not accounted for, and also in and by said alleged final report, it appears that a large sum of money, to wit, \$18,404.93, was withdrawn from interest, wholly without lawful warrant or authority, and caused to produce no income from the date of the death of said minor to the time of the filing of said alleged final report, to wit, the 6th day of March, A. D. 1888.

Your orator further shows that at the time of the filing of said alleged final reports in the probate court of said county, your orator, as one of the administrators of said estate, filed objections to the approval of the same by the judge of said court upon the ground that the same did not fully account for and contain a true statement of all the moneys and property of said estate which had come into the hands of the said Guadalupe Perea de Harrison as guardian of said deceased minor, and a hearing being had by said probate court the objections of your orator were sustained by said court, and from the decision of said court sustaining said objections the said Guadalupe Perea de Harrison, as the alleged guardian of said deceased minor, took an appeal, giving bond therefor which was duly approved by the judge of said probate court, all of which appears by the record

in the matter of objections to said alleged final report remaining in the said probate court.

And your orator shows that said appeal being duly taken and granted at the March term, A. D. 1888, of the probate court of said county of Bernalillo, became and was returnable to the May, 1888, term of the district court of the second judicial district of New Mexico, sitting in and for said county of Bernalillo, and the same should have been duly and regularly prosecuted to said term and docketed among the causes pending at said term, but instead thereof your orator shows and charges that the said appeal has never been prosecuted to and perfected in said district court, but the said appeal remains unprosecuted to and undocketed in said district court for four terms of said district court thereafter held, and up to the 20th day of October, A. D. 1889, at which said time said Guadalupe Perea de Harrison, at said county, departed this life, and said appeal has ever since said time and still does remain unprosecuted to, and undocketed in said district court.

Your orator charges that such failure to prosecute said appeal and to docket said cause for so long a time, is an abandonment and was for a long time prior to the death an abandonment, and under pretense of getting a final settlement of her affairs as such guardian, and despite the fact that she, the said Guadalupe Perea de Harrison admitted that there was a large balance in her hands subject to administration, as of the estate of said deceased minor, she yet pretended and claimed to hold the same in her said alleged capacity of guardian for a period of more than two years after the death of said minor and of administration duly and regularly granted upon his estate, during all of which period she refused to allow your orator to proceed with said administration, or to administer the said estate herself.

Your orator charges and shows that besides the property amounting as shown by said alleged final report to the sum of \$22,845.61 and a large sum of outstanding debts, there came into the hands of said Guadalupe Perea de Harrison, as such guardian, various sums of money and property amounting to more than six thousand dollars, (\$6,000), of which a bill of particulars was given the said Guadalupe Perea de Harrison as embodied and set forth in the objections filed by your orator in the probate court as aforesaid to the allowance and approval of said final report, a copy of which objections are annexed and marked "Exhibit D" and that various items of charges or pretended charges in said alleged final report were never claimed prior to the filing of said alleged final report and have been inserted therein so as to reduce the corpus of the estate of said minor, which at the time for the death of said minor was recognized by said guardian to be \$18,404.93 in money upon which interest had been accrued in the sum of \$846.47, sixteen shares of stock of the First Nat'l Bank of Santa Fe of the par value of one hundred dollars per share and of the market value of more than one hundred dollars per share, stock in the Bernalillo Bridge Company, one solvent note, sheep and other property amounting

exclusive of said bank stock to five thousand five hundred and eighty-two and $\frac{89}{100}$ dollars, and that to said corpus should be added the sum above stated and charged by your orator to have been received by said Guadalupe Perea de Harrison during the time of said guardianship.

Your orator charges and shows that said corpus, with the exception of taxes paid upon the estate of said ward and expenses of last illness and funeral of said deceased minor amounting altogether to less than the sum of one thousand dollars, remained in the hands of said Guadalupe Perea de Harrison up to the time of her death on, to wit, the 20th day of October, A. D. 1889, and your orator

charges and believes that the whole of said corpus, except as
12 aforesaid, together with interest, dividends on stock, sheep, wool and rents received since the death of said minor, amounting in all to the sum of thirty thousand dollars, came into the hands of said George W. Harrison, the then husband of said Guadalupe Perea de Harrison, and since the death of her, the said Guadalupe Perea de Harrison, he, the said George W. Harrison, has retained possession of the estate of said deceased minor, notwithstanding that your orator, as sole surviving administrator of said estate, has commanded of the said George W. Harrison to turn over to your orator the said estate, he, the said George W. Harrison, has refused and still refuses so to do, pretending that he, the said Harrison, has by reason of the said pretended appeal, abandoned as aforesaid long prior to the death of said Guadalupe Perea de Harrison, and as administrator of his said wife, the right to retain the possession and control of said estate and the effects thereof, and prevent the same from being duly and regularly administered by your orator as sole surviving administrator.

Your orator further shows that the said Guadalupe Perea de Harrison dying intestate on said October 20, A. D. 1889, the said George W. Harrison was by the probate court of the county of Bernalillo, appointed and he qualified as administrator of her estate on, to wit, January 6, A. D. 1890, and as your orator is advised and believes it to be true, pretends to hold possession of the said estate of said minor by virtue of his being administrator of the estate of his deceased wife, which said estate of said minor he unlawfully took possession of prior to his becoming administrator as aforesaid, and before becoming such administrator unlawfully and against the demand of your orator for possession and control thereof, withheld the same.

13 And your orator shows and charges that as such administrator, the said George W. Harrison, pretends that the said appeal so taken and not prosecuted, and abandoned as aforesaid, gives him the right as such administrator to keep and retain possession of said estate of said minor, yet remaining in the hands of said Guadalupe Perea de Harrison at the time of her death, until there shall be rendered on the said pretended appeal a judgment settling said alleged final report and the said objections of your orator thereto, all of which pretenses and claims your orator alleges to be without lawful warrant or authority.

And your orator further shows that the withholding of said estate from due administration and management by the administrator and administratrix aforesaid, by the said Guadalupe Perea de Harrison, under pretense of finally settling her account as guardian and the subsequent withholding thereof by the said George W. Harrison as administrator aforesaid, has resulted in great loss and damage and waste to said estate of said minor in the way of caring for, collecting and making the same to yield income and interest for your orator and the other distributees thereof, said damage and waste being five thousand dollars or other large sum, and for which said damage and waste your orator claims and charges that the said estate of Guadalupe Perea de Harrison and the said George W. Harrison should account to your orator as sole surviving administrator as aforesaid, and said withholding has besides, caused your orator as such surviving administrator to lay out and expend counsel fees and other large sums in and about the trying to collect from the said George W. Harrison, in whatever capacity he may hold and pretend to have the right to hold, the assets and property of the said Jose L. Perea, Second, deceased.

14 In consideration whereof and forasmuch as your orator suing as said sole surviving administrator, and as one of the heirs of the estate of said Jose L. Perea, Second, deceased, can only have and obtain relief, full, adequate and complete relief in a court of equity where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said George W. Harrison and George W. Harrison as administrator of the estate of Guadalupe Perea de Harrison, deceased, Jose L. Perea, Jesus M. Perea, Benicio F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo, and Justo Armijo, her husband, Soledad Perea de Castillo, and Justiniano Castillo, her husband, Filomena Perea de Otero, and Mariano S. Otero, her husband, Barbara Perea de Yrisarri, and Jacobo Yrisarri, her husband, (all of whom your orator prays may be made parties to this bill) may to the best of their knowledge, information and belief full, true, direct and perfect answer make, but not under oath (answers being hereby expressly waived) to all and singular the matters aforesaid and that as fully and particularly as if the same were here repeated.

And that the said George W. Harrison individually and as administrator of the estate of Guadalupe Perea de Harrison, deceased, may account to your orator as sole surviving administrator of the estate of Jose L. Perea, Second, for the property and assets of said estate of Jose L. Perea, Second, deceased, that remained in the hands of said Guadalupe Perea de Harrison at the time of her death, and that as such administrator of the estate of said Guadalupe Perea de Harrison, he account for the value of all the estate of said Jose L. Perea, Second, that came into her hands while guardian as aforesaid, and after the death of said Jose L. Perea, Second, and not

15 remaining in her hands while guardian, at the time of her death; that the said George W. Harrison, individually and as administrator as aforesaid may account for all assets, rents, in.

terest and wool that have been collected by him or should have been collected by him as assets of said estate of said Jose L. Perea, Second, deceased, since the death of said Jose L. Perea, Second, that the said pretended appeal and all right or claim to further prosecute the same in the said district court be decreed null and void, that said George W. Harrison, individually and as administrator, account to your orator as sole surviving administrator, for the damage, waste and injury accruing and having been caused to the said estate of Jose L. Perea, Second, for the wrongful withholding of the same from administration by the said Guadalupe Perea de Harrison and afterwards by the said George W. Harrison, that a final decree may be entered for a settlement of said estate and the distribution thereof, and that your orator as said surviving administrator be decreed his reasonable expense including solicitors' fees, against said George W. Harrison, individually and as administrator as aforesaid in and about this suit, and that your orator have such other and further relief in the premises as to your honor shall seem meet.

May it please your honor to grant unto your orator a writ of subpoena in chancery to be directed to the said George W. Harrison, George W. Harrison, administrator of the estate of Guadalupe Perea de Harrison, deceased, Jose L. Perea, Jesus M. Perea, Benicio F. Perea, Mariano Perea, and Jacobo Perea, Beatriz Perea de Armijo, and Justo Armijo, her husband, Soledad Perea de Castillo, and Justiniano Castillo, her husband, Josefa Perea de Castillo, and J. M. Castillo, her husband, Filomena Perea de Otero, and Mariano S. Otero, her husband, Barbara Perea de Yrisarri, and Jacobo

16 Yrisarri, her husband, thereby commanding them to be and appear before this honorable court on the first day of its next May term thereof, to be held at Albuquerque, in the county of Bernalillo, then and there to answer this bill, and that as to said Cesaria Perea de Hubbell and Sydney A. Hubbell, her husband, who reside beyond the jurisdiction of the court, to wit, in the county of Pueblo, in the State of Colorado, and who are not made parties to this bill for said reason, your orator prays process in chancery to make them parties to this bill if they should come within the jurisdiction of this court, and that your honor will appoint for said infant defendant a guardian *ad litem* and that said defendants shall stand to, perform and abide by such order, decree and judgment therein as to your honor shall seem meet. And your orator will ever pray, etc.

NEEDHAM C. COLLIER,
Solicitor for Complainant.

EXHIBIT "A."

Report on Property of J. L. Perea, Second, Minor.

To the Hon. J. R. Armijo, probate judge of and for Bernalillo county, Territory of New Mexico:

Your petitioner, G. W. Harrison, for Guadalupe Harrison, guardian of above-named minor, begs leave to make the following report to your honor:

Guadalupe Perea, now Guadalupe Harrison, was appointed guardian of J. L. Perea, Second, on July 23rd, 1884.

She received for him property to the amount of.....	\$15,586 38
She received afterwards for minor	2,071 71
She received in October, 1885, sheep.....	345 00
Total	\$18,003 09

17 All the above still exists and is in safe place and condition; the interest well pays all expenses of said minor.

G. W. HARRISON,
For GUADALUPE HARRISON, *Guardian*.

Approved July 6, 1886:
J. R. ARMIJO,
Probate Judge.

EXHIBIT "B."

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the Probate Court.

In the Guardianship of JOSE L. PEREA, SECOND.

Final Report of Guadalupe Harrison, Guardian of said Jose L. Perea, Second, Minor, Now Deceased.

To the Honorable Jesus M. Chavez, judge of the probate court:

Your petitioner, Guadalupe Harrison, respectfully represents that on the 23rd day of July, A. D. 1884, letters of guardianship were issued to her, by this court, and that such letters have not been revoked, and that the following is a list of the money, negotiable paper, property and other assets of the estate of said Jose L. Perea, Second, received by your petitioners as guardian of said minor:

1. 2 promissory notes for the sum of \$7,514.75 each....	\$15,029 75
2. Sheep and money.....	2,071 71
3. Cash	128 22
4. Sheep.....	577 00
5. Outstanding debts.....	4,468 26
6. Bank stock (First National Bank of Santa Fe).	1,607 14
18 7. Cash	1,308 12
Total	\$25,190 20

Your petitioner further reports that there is some 8,000 pounds of wool belonging to the estate of said minor, but that the same has not been delivered to your petitioner, and she cannot, therefore, turn the same over, but is ever ready and willing to do so as soon as the same has been delivered to her as guardian of said minor.

Your petitioner further reports that there is also some stock in the Bernalillo Bridge Company, amounting to some \$71.42.

GUADALUPE HARRISON,
By G. W. HARRISON.

Filed in my office this 7th day of November, A. D. 1887.

F. H. KENT.

EXHIBIT "C."

Final Report of Guadalupe Perea de Harrison, Guardian of the Estate of Jose L. Perea, Second.

Guadalupe Perea de Harrison, guardian as aforesaid, to amount of money, property, etc., received on account of said ward, Dr.

June 10th, 1885:

To one-half of note and interest thereon of Pedro Perea and others for interest of Julian and Jose L. Perea, Second, in estate of Jose L. Perea, deceased, which was received June 10th, 1885	\$3,907 73
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Dec. 10th, 1885:

To one-half of note and interest thereon of Pedro Perea and others, for interest of same heirs in said estate, received Dec. 10th, 1885.....	4,058 02
--	----------

June 10th, 1886:

To one-half of note and interest of Pedro Perea and others, for interest of same heirs in said estate, which was received June 10th, 1886.....	4,208 32
--	----------

Dec. 10th, 1887:

To one-half of note and interest thereon of Pedro Perea and others, for interest of same heirs in said estate...	4,794 47
--	----------

Jan. 27th, 1885:

Cash in Chihuahua, Mexican money, \$30.57, worth in American money 75 cts. on the \$1.00.....	22 92
---	-------

Dec. 11th, 1886:

Cash received from administrators of Jose L. Perea....	128 22
--	--------

Dec. 11th, 1886:

Cash received from same on account of dividend on stock in First National Bank of Santa Fe.....	1,308 12
---	----------

Jan. 30th, 1887:

Cash received from W. T. Thornton on account of indebtedness turned over to him by administrators of Jose L. Perea, deceased.....	336 38
---	--------

Items of property not in cash received on account of said ward.

Dec. 11th, 1886 :

Received of the administrators of Jose L. Perea, deceased, a list of interests in indebtedness due the estate of Jose L. Perea, deceased, less the sum of \$336.38, paid by W. T. Thornton, as above charged, (that being the whole amount ever received on account of said list of indebtedness)	4,131 88
--	----------

Dec. 11th, 1886 :

Received of same, bank stock, in the First National Bank of Santa Fé, of the value of	1,600 00
Amount carried forward.....	24,496 06
Amount brought forward... ..	24,496 06

Dec. 11th, 1886 :

Stock in the Bernalillo Bridge Company of the par value of	71 42
---	-------

Jan. 27th, 1885 :

Sheep from estate of Jose L. Perea, deceased.....	140 00
---	--------

Dec. 11th, 1886 :

Sheep from the estate of Jose L. Perea, deceased.....	577 00
Interest in Manuel Gonzales' vineyard, as per statement of the administrators of the estate of Jose L. Perea, de- ceased	189 55

Feb. 1st, 1887 :

Received as dividends on bank stock, ten per cent.....	160 00
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Aug. 1st 1887 :

Received as dividends on bank stock, ten per cent.....	160 00
--	--------

Feb. 1st, 1888 :

Received as dividends on bank stock, nine per cent. ...	144 00
---	--------

Feb. 22nd, 1886 :

Received as dividends on bridge stock, twelve per cent... ..	8 57
--	------

Dec. 21st, 1887 :

Received dividends on bridge stock, since Feb. 22nd, 1886, thirty per cent.....	21 42
--	-------

21 Jan. 27th, 1885 :

To rents collected from real estate in Chihuahua, \$156.68, worth 75 cts. on the dollar.....	117 51
---	--------

Jan. 30th, 1887 :

Rents from real estate in Santa Fé.....	66 86
---	-------

Aug. 25th, 1887:

To four per cent. received from bank on cash deposited from time of its reception to death of ward, to wit, on \$18,404.98.....	846 47
	<hr/> \$26,577 44

CREDITS.

Guadalupe P. Harrison, as guardian of said ward, credits herself with the following, to wit:

By amount of list of indebtedness turned over as above charged, and still uncollected in the hands of said guardian	\$4,131 88
By interest in the Manuel Gonzales vineyard, as above charged	189 55
By amount expended in necessary improvements on real estate of ward, as shown by itemized statements hereto attached, marked Exhibit "A"	556 00
By amount expended and cost of support and maintenance of ward from April 2nd, 1883, to August 25th, 1887, less \$500.00 paid on this account by administrators	2,650 00

Jan. and Feb. 1886:

By one-half of expenses in trip to Mexico account of health of ward	500 00
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Nov. 29th to Dec. 31st, 1886:

22 By one-half of expenses in trip to St. Louis for purpose of medical treatment of ward and medical treatment.....	450 00
By amount of taxes paid for ward for the year 1885...	205 50
By amount of taxes paid for ward for year 1886.....	212 48
By amount of taxes paid for ward for year 1887.....	206 44
By additional tax paid for ward in year 1887.....	67 38

August 28th, 1884:

By cash paid for repairs on mill property in Bernalillo.	40 00
By amount of labor and expenses in work done on the Bernalillo bridge for ward.....	
By amount of money refunded to administrators on account of rents which they claimed to have received from Chihuahua property and turned over to her by mistake.....	67 60

To amount of funeral expenses and last sickness of said ward, as follows:

By amount paid Dr. Longwell for services.....	125 00
Expenses paid Dr. Wroth in trip to Bernalillo.....	10 00

Funeral expenses, undertaker's bill, etc.....	120 00
Priest's services as per bill... ..	225 00
	<hr/>
	\$9,306 83

Balance in hands of guardian..... \$17,670 61

From information and according to best belief of guardian there is still considerable property belonging to the estate of this ward which guardian has not received.

23 *Remarks.*

Said guardian still has in her hands the list of indebtedness as above set forth, the stock in the First National Bank of Santa Fé, and the stock in the Bernalillo Bridge Company above mentioned, and hereby offers to account for the same in specie and asks for a final settlement of said estate, and for her discharge as such guardian.

GUADALUPE P. HARRISON.

TERRITORY OF NEW MEXICO, {
County of Bernalillo. }

Guadalupe Perea de Harrison, being duly sworn on oath deposes and says, that the foregoing statement of her accounts as guardian of Jose L. Perea, Second, is true and correct to the best of her knowledge, information and belief.

Sworn to and subscribed before me this 5 day of March, A. D. 1888.

[SEAL.]

HERMAN BLOCK,
Notary Public.

EXHIBIT "A."

To 28 days' scraping, one man and extra team at \$2.50...	\$70 00
Cutting out cottonwood trees and stumps... ..	25 00
Eight men two weeks leveling up land.....	96 00
Alfalfa seed.....	12 00
Sowing the same.....	8 00
Making acequia and water boxes, etc.....	100 00
Fence posts (over 500).....	50 00
Wire for fence... ..	109 00
Lumber for fence.....	41 00
Gate, extra good, etc.....	15 00
Making fence.....	25 00
25 pounds of staples for fence.....	2 50
24 Nails for fence.....	2 50
	<hr/>
Total.....	\$556 00

Filed in my office this 6th day of March, 1888.

[SEAL.]

F. H. KENT, *Clerk*,
By J. A. SUMMERS, *Deputy*.

EXHIBIT "D."

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the Probate Court in and for said County.

In re GUADALUPE PEREA DE HARRISON, Guardian of Jose L. Perea.

Now comes Pedro Perea and objects to the approval of the final report of said Guadalupe Perea de Harrison and to her discharge as guardian of said minor, Jose L. Perea, Second, for the reasons that the same is incorrect and insufficient in the following particulars, to wit: The said guardian in and by said report fails to charge herself with the following items, which are legally chargeable, to wit:

Jan'y 27, 1885:

Mexican silver dollars in Chihuahua rec'd by her from adm'rs.....	\$1,420 82
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Oct., 1884:

757 sheep rec'd by her from adm'rs.....	757 00
---	--------

1884:

Texas, Santa Fe and Northern Railroad stock and bonds to amount of.....	303 57
---	--------

March 16, 1885:

To money rec'd by her from adm'rs.....	496 71
--	--------

March 6, 1885:

To money rec'd by her from adm'rs.....	108 49
--	--------

Jan'y 30th, 1887:

To remainder rec'd from W. T. Thornton.....	117 79
---	--------

25 Dec. 11, 1886:

To remainder of bank stock, First National Bank of Santa Fé.....	7 14
--	------

Jan'y 30, 1887:

To remainder of Santa Fé rents.....	47 49
-------------------------------------	-------

March, 1887:

To rents of property in Chihuahua.....	173 60
--	--------

April 9, 1885:

Money rec'd on acc't Bernalillo mill.....	10 49
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Crops received during her guardianship and various items, including interest upon sheep and money not sufficiently charged in

said account. The said guardian in and by said report improperly credits herself with large amounts.

WARREN & FERGUSSON.

Filed in my office this 12th day of March, 1888.

[SEAL.]

F. H. KENT, *Clerk*,
By J. A. SUMMERS, *Deputy*.

TERRITORY OF NEW MEXICO, {
County of Bernalillo. }

I, H. V. Harris, clerk of the probate court in and for the county and Territory aforesaid, do hereby certify the above and foregoing to be a full, true and correct transcript of original reports as now on file in my office.

Witness my hand and official seal this 25th day of March, A. D. 1890.

[SEAL.]

H. V. HARRIS,
Probate Clerk,
By J. A. SUMMERS, *Deputy*.

Said bill of complaint being endorsed as follows: No. 2943. Territory of New Mexico, second judicial district, county of Bernalillo. Pedro Perea, adm'r, plaintiff, *vs.* G. W. Harrison 26 *et al.*, defendants. Bill of complaint. Filed in my office this 3rd day of April, 1890. Chas. F. Hunt, clerk. Needham C. Collier, Albuquerque, N. M., attorney for compl't.

And thereupon on the same day, to wit, the 3rd day of April, A. D. 1890, there was duly issued out of the office of the clerk of said court, a subpœna in chancery in the words and figures as follows, to wit:

The Territory of New Mexico to George W. Harrison, individually and as administrator of the estate of Guadalupe Perea de Harrison, deceased; Jose L. Perea, Jesus M. Perea, Benicio F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo, Justo R. Armijo, her husband; Soledad Perea de Castillo, Justiniano Castillo, her husband; Josefa Perea de Castillo and J. M. Castillo, her husband; Filomena Perea de Otero and Mariano S. Otero, her husband; Barbara Perea de Yrisarri and Jacobo Yrisarri, her husband; Grover William Harrison, a minor, all of Bernalillo county, N. M., and Cesaria Perea de Hubbell and Sydney A. Hubbell, her husband, of Pueblo, Colo., defendants, Greeting:

You, and each of you, are hereby commanded, that, laying all other matters and things aside, you do cause an appearance to be entered for you in the district court for the county of Bernalillo in the second judicial district of the Territory of New Mexico, in chancery sitting, on the first day of the next term thereof, to be begun and held within and for said county, on the 2nd Monday of May, A. D. 1890, to answer unto a bill filed against you by Pedro Perea,

27 administrator of the estate of Jose L. Perea, Second, deceased, complainant, and that you do answer concerning such things as may then and there be alleged against you, and observe what the said court shall direct in this behalf, on pain of an attachment issuing against your person, and such other process of contempt as said court shall award.

Witness the Hon. William D. Lee, associate justice of the supreme court of the Territory of New Mexico, and judge of the second judicial district court thereof, and the seal of said district court this 3rd day of April, A. D. 1890.

[SEAL.]

CHAS. F. HUNT, *Clerk.*

Endorsement.

This is a suit in equity for an accounting between the parties of all property and assets of estate of Jose L. Perea, Second, that remained in the hands of Guadalupe Perea de Harrison at the time of her death and that came into her hands prior to that time, and all assets of said ward that have come into the hands of defendant G. W. Harrison, individually and as such administrator, since the demise of Guadalupe Perea de Harrison, and for other and further relief, and the defendants are hereby notified to enter their appearance in this suit in the office of the register of court on or before the 2nd Monday of May, 1890: otherwise the bill herein may be taken *pro confesso*.

CHAS. F. HUNT,
Clerk and Register in Chancery.

Further endorsement: No. 2943. District court, Bernalillo county. Pedro Perea, adm'r, &c., *versus* G. W. Harrison, adm'r, *et al.* Original subpoena in chancery. N. C. Collier, Albuquerque, solicitor for complainant. Jose L. Perea, the sheriff of Bernalillo
28 county, being a party to this suit, Jose Matta is hereby designated and authorized to serve this writ. Chas. F. Hunt, clerk.

Which said writ was afterwards returned to and filed in the office of the clerk of said court on the 12th day of May, 1890, with the return of the special deputy thereon, in the words and figures as follows, to wit:

I, Jose Mata, specially deputed to serve the within subpoena in chancery for the reasons stated thereon, do hereby certify that I served the said subpoena by delivering a copy thereof to each of the following-named persons, to wit, Jose L. Perea, Jesus M. Perea, Benicio F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo, Justo R. Armijo, her husband, Soledad Perea de Castillo, Justiniano Castillo, her husband, Josefa Perea de Castillo, J. M. Castillo, her husband, Filomena Perea de Otero, Mariano S. Otero, her husband, George W. Harrison and Grover Wm. Harrison, said minor at said county of Bernalillo, this April 7th, A. D. 1890, the said

Cesaria Perea de Hubbell and Sydney A. Hubbell, not being found in said county.

JOSE D. MATA,
Special Deputy.

And thereafter at a regular term of the district court of the second judicial district of the Territory of New Mexico, in and for the county of Bernalillo, in said district, begun and held on the 12th day of May, A. D. 1890, at the court-house in said county, the following proceedings, among others, were had on the first day of the said term, it being the 12th day of May, A. D. 1890.

Present: The Honorable Wm. D. Lee, associate justice of the supreme court of the Territory of New Mexico, and judge of the second judicial district court, thereof, presiding:

PEDRO PEREA, Adm'r, &c.,
vs.
GEO. W. HARRISON, Adm'r, *et al.* } No. 2943.

Now comes W. B. Childers and enters his appearance for defendant Harrison, herein.

And thereafter upon the 22nd day of said term, it being June 5th, 1890, the following proceedings, among others, were had and entered of record, to wit:

PEDRO PEREA, Adm'r, &c.,
vs.
GEO. W. HARRISON, Adm'r, *et al.* } No. 2943.

Now comes defendant Geo. W. Harrison, adm'r, and files demurrer to complainant's bill herein. Said demurrer being in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court, Second Judicial District.

PEDRO PEREA, Adm'r, etc.,
vs.
GEORGE W. HARRISON, Adm'r, *et al.* } No. 2943.

The demurrer of George W. Harrison, administrator of the estate of Guadalupe Perea de Harrison, deceased, and of the said George W. Harrison individually, to the bill of complaint of Pedro Perea, administrator of the estate of Jose L. Perea, 2nd, *et al.*

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to said bill, and for cause of demurrer shows, that

First. Because complainant has sued in two capacities, individually, and as surviving administrator of Jose L. Perea, Second,

and the bringing of the suit in such double capacity, constitutes a misjoinder of parties complainant.

Second. Because said bill seeks to surcharge and falsify the accounts, statements and reports filed by Guadalupe Perea de Harrison, deceased, of whose estate, defendant, George W. Harrison, is administrator, as guardian of Jose L. Perea, 2nd, to wit, the account, statement and reports alleged to have been filed by her respectively on the 6th day of July, A. D. 1886, on the 7th day of November, A. D. 1887, and on the 6th day of March, A. D. 1888, and does not definitely, and with sufficient certainty allege wherein and in what particulars said guardian failed in said reports, statements and accounts to properly charge herself with items, and wrongfully took credit for items, to which credit shows she was not entitled.

Third. Because said defendant George W. Harrison is made a party defendant to said bill in his individual capacity, when said bill contains no allegations, which if true, would make him liable in such capacity.

Fourth. Because the district court as a court of equity has no original jurisdiction to entertain a bill for the settlement of a guardian's accounts.

Fifth. Because the district court as a court of equity has no original jurisdiction to entertain a bill for the settlement of an administrator's accounts.

Sixth. Because complainant has a full, complete and adequate remedy in the probate court.

Seventh. Because complainant has a full, complete and adequate remedy in a court of law.

31 Eighth. Because complainant is not entitled to the relief prayed for in his bill, to wit, the damages prayed for, and to his attorney and counsel fees.

Ninth. Because said bill prays both for the settlement of the guardianship of Guadalupe Perea de Harrison, and also of the estate of the deceased ward, Jose L. Perea, 2nd, and is therefore multifarious.

Tenth. Because said complainant as the co-administrator of defendant's interstate seeks by said bill to administer the estate of Jose L. Perea, 2nd, alone, and to the exclusion of defendant, who is entitled to participate in such administration as the administrator of complainant's co-administrator.

W. B. CHILDERS AND
E. A. FISKE,

Solicitors for Defendant Geo. W. Harrison.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

William B. Childers, being first duly sworn, on his oath deposes and says, that the foregoing demurrer is not interposed in this cause for delay, and that said affiant is attorney and agent of said defendant George W. Harrison, for the purpose of making this affidavit.

WM. B. CHILDERS.

Subscribed and sworn to before me this 4th day of June, A. D. 1890.

[SEAL.]

E. W. DOBSON,
Notary Public.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

W. B. CHILDERS,
Solicitor for Defendant Harrison.

Endorsed : No. 2943. Territory of New Mexico, county of Bernalillo. Pedro Perea, adm'r etc. *vs.* George W. Harrison, adm'r, *et al.* Demurrer of defendant Harrison. Filed in my office this 5th day of June, 1890. Chas. F. Hunt, clerk. W. B. Childers and E. A. Fiske, solicitors for def't.

And thereafter, upon the forty-fifth day of the said term, it being the 10th day of July, A. D. 1890, the following proceedings, among others, were had and entered of record, to wit :

PEDRO PEREA, Adm'r, etc.,	} No. 2943.
<i>vs.</i>	
GEORGE W. HARRISON, Adm'r, <i>et al.</i>	

Now comes defendant Harrison and withdraws his demurrer heretofore filed to complainant's bill, and come the parties and consent that defendant- have until August tenth, 1890, to file their answer herein, and the complainant suggests to the court the infancy of Grover William Harrison, and asks the court to appoint a guardian *ad litem* for the said minor Harrison, and thereupon the court appoints William B. Childers, guardian *ad litem* for the said defendant, Grover William Harrison, and comes the complainant and dismisses the bill of complaint as to the defendant Jesus M. Perea, deceased.

And thereafter upon the 29th day of August, A. D. 1890, the following proceedings among others were had and entered of record, to wit :

33	<i>Geo. W. Harrison, Adm'r, et al.</i>	} No. 2943.
	<i>vs.</i>	
	GEO. W. HARRISON, Adm'r, <i>et al.</i>	

Now comes defendant Harrison individually and as administrator and files answer herein, and files motion for leave to file cross-bill.

Said answer and motion being in the words and figures as follows, to wit :

TERRITORY OF NEW MEXICO, }
 County of Bernalillo. }

In the District Court, Second Judicial District.

PEDRO PEREA, Administrator, *et al.*, Complainant, }
vs.
 GEORGE W. HARRISON *et al.*, Defendant. }

Answer of George W. Harrison and of said George W. Harrison, Administrator of the Estate of Guadalupe Perea de Harrison.

The joint and several answers of George W. Harrison and of said George W. Harrison as administrator of the estate of Guadalupe Perea de Harrison, deceased, to the bill of complaint of the complainant Pedro Perea, administrator, &c., said bill having been filed against the said defendant, George W. Harrison, individually and as administrator of the estate of the said Guadalupe Perea de Harrison, deceased.

This defendant now and at all times hereafter, saving to himself all and all manner of benefit or advantage that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering saith—

34 That he admits that heretofore, to wit, on the 27th day of August, A. D. 1887, Jose L. Perea, Second, a minor, about the age of eight years, died at said county of Bernalillo, leaving the said Guadalupe Perea de Harrison, his mother, then living, his heir-at-law, but the said defendant does not admit that the said complainant and the other defendants mentioned in said bill, to wit, Jose L. Perea, Jesus M. Perea, Benicio F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo, Soledad Perea de Castillo, Josefa Perea de Castillo, Filomena Perea de Otero, Barbara Perea de Yrisarri, Cesaria Perea de Hubbell, and Grover William Harrison, were and are the heirs-at-law of the said deceased; but said defendant alleges that it is a question of law, whether or not said persons are such heirs-at-law, and he neither admits nor denies the fact, but leaves the decision of the same to the court.

This defendant admits that prior to the death of said Jose L. Perea, Second, the said Guadalupe Perea de Harrison, became the guardian of the property of said Jose L. Perea, Second, but the exact date of her qualification as such guardian, defendant does not admit, but calls for proof thereof.

Defendant admits that the said Guadalupe Perea de Harrison as such guardian went into possession and control of the property and effects so received to the date of the death of said minor. But this defendant denies that the property and effects so received were all the property and effects of said minor, and alleges that the property and effects so received were received from the complainant, Pedro Perea, Jesus M. Perea, now deceased, and Mariano Perea, as administrators

of the estate of Jose Leandro Perea, deceased, who was the father of the said administrators of the said Jose L. Perea, Second.

35 And the said defendant alleges that the property and effects so turned over to the said Guadalupe Perea de Harrison, as such guardian, by said administrators and received by her was but a small part of what the said minor, Jose L. Perea, Second, was entitled to have and receive from the said administrators on account of the estate of the said Jose Leandro Perea, Sr., in their hands, and that there has never been any full and complete settlement by said administrators of said estate, or any legal settlement thereof, whatever, and that upon a full and complete and just settlement of said estate, the estate of the said Jose L. Perea, Second, will be entitled to have and receive from the said administrators of the estate of Jose Leandro Perea, Sr., a very large amount of property and effects, far exceeding in value any interest which the said administrators, even if they are held to be heirs-at-law of the said minor, can have in the estate of the said minor, and that the said complainant, Pedro Perea, is liable and responsible to the estate of the said minor, Jose L. Perea, Second, for any and all of the interest of the said minor in the estate of the said Jose Leandro Perea, Sr., which said complainant and his co-administrators have failed to account for.

Further answering, the said defendant admits that the effects of the said Jose L. Perea, Second, which went into the hands of his guardian was personal property, money, promissory notes, bank stock, as alleged in complainant's bill, but defendant denies that the same were in value or amount the sum of thirty thousand dollars.

Further answering said defendant admits that a report was filed by said guardian in the probate court of the county of Bernalillo, the exact date, of the filing of which this defendant neither admits

36 nor denies, but said defendant denies that said report is correctly set forth in complainant's bill, and that Exhibit "B" filed therewith is a correct copy of the same, and defendant alleges that the original thereof is now on file in the probate court, and as to its contents will speak for itself, and hereby makes express reference thereto.

Defendant further answering denies that said report did not show by a very large amount, to wit, the sum of twelve thousand dollars, the true amount of the assets and property of said ward which had come into the hands of and had been received by said guardian, and said defendant denies that said guardian in and by said report made through her then husband, this defendant failed and omitted to account for various items of money and property which had come into the hands of said guardian, belonging to the estate of said ward, and denies that such items remained in her hands as such guardian up to the date of the death of said guardian.

Further answering, defendant admits that on the 5th day of September, A. D. 1887, the complainant and the said Guadalupe Perea de Harrison each applied for the grant of letters of administration upon the estate of said deceased minor, and that the probate court of said county of Bernalillo appointed said complainant adminis-

trator and the said Guadalupe Perea de Harrison administratrix of the estate of the said Jose L. Perea, Second, deceased.

Further answering, said defendant admits that the said complainant and said Guadalupe Perea de Harrison qualified as such administrator and administratrix as in said bill alleged.

Further answering, this defendant denies that it was through his influence that said Guadalupe Perea de Harrison pretended and claimed that after the death of her said ward and the qualifications of said complainant and said guardian as administratrix of his estate, she still held the property and effects of said deceased minor in her late capacity of guardian, and the defendant alleges that the said Guadalupe Perea de Harrison was advised by counsel that after the death of her said ward her guardianship would not be terminated until she made a final report as such guardian and until the said report had been approved, and that it was necessary that such final report should be made and approved, and she by order of court be finally discharged as such guardian. And defendant further states that he is so advised by counsel himself, and alleges that such is the fact and that the law so requires.

Defendant further answering, admits that a report was made and filed as alleged on said bill on the 7th day of November, A. D. 1857, and admits that said report admits that property and effects belonging to said minor had been received to the amount of \$25,190.20, and that there was 8,000 pounds of wool and stock of the Bernallillo Bridge Company, in the sum of \$71.42, belonging to the estate of the deceased minor not then delivered to her. But this defendant alleges that said report shows that a part of the effects so stated to have been received consisted of outstanding debts and promissory notes which the said complainant and his co-administrators of the estate of Jose Leandro Perea had pretended to turn over to said guardian on account of said minor, and that said outstanding debts were either uncollectable or were parts of debts due to the late Jose Leandro Perea, Sr., divided between the different distributees of said estate, and for which said guardian received no evidence whatever, given by the debtors, and the collection of which she could not enforce, because a part of a debt is not assignable, and defend-

38 ant alleges that it was the duty of complainant and his co-administrators to have themselves collected such debts and divided the money between *its* distributees of said estate after the same was collected, and not to have attempted to assign a portion of uncollectable debt to said minor and that said administrators are still accountable for said debts. Defendant further alleges that said report was true as far as it goes, and as it reads, but that the same was and is incomplete in this, that said guardian did not set forth the credits to which she was entitled.

Defendant alleges that the 8,000 pounds of wool, therein referred to, was wool sheared from sheep belonging to the estate of Jose Leandro Perea, Sr., before the division of said sheep between the distributees of said estate and was in the hands of said complainant and for which he has never accounted, and that said minor's interest

in said wool amounted to 8,000 pounds, worth at least 20 cents per pound. Defendant further alleges that the bridge stock therein referred to, has since the making of said report been turned over, but that the same was then, ever since has been wholly worthless.

Further answering, defendant admits that the said Guadalupe Perea de Harrison, continued prior to the 6th day of March, A. D. 1888, to insist that she still held the property and effects of the said minor which were in her hands as guardian, and refused to permit the said complainant to intermeddle therewith, until she could make a final report as guardian, and procure a final discharge as such, all of which this defendant alleges she did under advice of counsel and as she had a right to do. Further answering, this defendant states that on the 6th day of March, A. D. 1888, the said guardian

did file what purported to be another final report of her guardianship, and asked that her said report be approved, and she be finally discharged as such guardian, and defendant alleges that said last-mentioned report was filed because exceptions had been taken to the report filed on November 7th, 1887, in that it did not set forth with sufficient particularity and detail the different items of said account and did not set forth the credits to which she was entitled. Said defendant does not admit, but denies that said final report referred to as Exhibit "C" in said bill is correctly set forth therein, and said defendant alleges that said report is correct in every particular, and charged said guardian with every item of money and property received by her as such guardian, and that in and by said report she claimed no item to which she was not entitled, and said defendant refers to the report itself for the particulars and details thereof, and makes the same a part of this answer.

And said defendant denies that the three said reports are inconsistent with each other, but that each of them correctly set forth said estate at the times the same were made with only such differences as herein set forth. And this defendant denies that in and by said last final report it appears that sums of money and property which should have been accounted for in former reports were not accounted for, and this defendant denies that said guardian was by law required to keep the funds belonging to said minor at interest after his death, or is accountable for interest thereon after his death.

Defendant further answering, says that he admits that at the time of the filing of the said last-mentioned final report, the said complainant filed objections to the approval of the same, and that said objections were sustained, and the appeal taken from said action of the court as alleged in said bill, and defendant alleges that upon the hearing had upon said final report, the probate court refused to hear and did not hear any evidence whatever, but arbitrarily refused to consider said report.

Further answering, defendant denies that said appeal has been abandoned and remains unprosecuted in the district court and alleges that while by inadvertence the same had not been docketed in said court at the time of the filing complainant's bill, but yet the same has been since docketed and is now pending therein, and defendant further answering alleges that it was in the power of said

complainant to cause said appeal to be docketed, at any time after the first three days of the term to which it was returnable had he seen fit to do so. And defendant further answering alleges that it is wholly immaterial whether said appeal has been abandoned or not, because a full accounting of said guardianship, as well as of the administration of the complainant and his co-administrators of the estate of Jose Leandro Perea, Sr., deceased can be had in this court.

Further answering, defendant denies that besides the property amounting as shown in said alleged final report to the sum of \$22,845.61, and a large amount of outstanding debts, there came into the hands of said Guadalupe Perea de Harrison, as such guardian, various sums of money and property amounting to more than six thousand dollars (\$6,000.00).

Defendant admits that said complainant filed as a part of his objections to said final report, a list of items which he claimed had been omitted therefrom, and with which said guardian was charged, but defendant denies that she was so properly chargeable therewith, or with any part thereof.

41 Further answering, defendant alleges that it is wholly immaterial whether all the items in said final report had been filed prior to the final report or the filing of the same or not, that all of said items are proper credits to which said guardian is by law entitled. Further answering, defendant says that said reports made from time to time speak for themselves, and denies that to the corpus of said estate as shown by said reports the sum claimed by complainant to have been received by said guardian or any sum whatever should be added. Further answering defendant denies that the said corpus, as alleged in said bill, with the exception of taxes paid upon the estate of said ward and expenses of last illness and funeral of said deceased minor amounting altogether to less than one thousand dollars, remained in the hands of said guardian up to the time of her death, but alleges that all of said said estate as shown by said final report filed on March 6th, 1888, after allowing the credits claimed, *the remainder* in her hands up to the time of her death, and afterwards came into the hands of this defendant as the administrator of his deceased wife, the said Guadalupe Perea de Harrison, and as such administrator he stands ready and willing to fully account for the same. And further answering, this defendant denies that the complainant is entitled to the possession of said estate until the said guardianship accounts have been fully settled, and said defendant further alleges that said complainant is accountable for the assets of the estate of Jose Leandro Perea, Sr., for which he has never accounted, and of which administration there has never been any valid final settlement, and in which said assets so unaccounted for the said Guadalupe Perea de Harrison, as the widow of said Jose Leandro Perea, deceased, and since her death,

42 her child, the defendant, Grover William Harrison, and this defendant as her surviving husband, had and have interest far exceeding in amount any interest said complainant can have in the estate of said Jose L. Perea, Second. And said defendant

further answering alleges that although the said Guadalupe Perea de Harrison in her lifetime demanded that said complainant fully account for said assets, yet he failed and refused to do so, and she was compelled to bring suit in this honorable court against him for the same, which said suit is still pending therein, and will be hereafter more fully referred to.

Defendant alleges that he did not refuse to turn over said guardianship estate to said complainant, for the reasons alleged in said bill, but that there might be a full and just accounting as to the said estate, and for no other reason.

Further answering defendant admits that Guadalupe Perea de Harrison died intestate in October, 1889, and that this defendant was appointed, qualified and is now the administrator of her estate, and that he holds possession of said guardianship estate lawfully as such administrator of the estate of his deceased wife, because her guardianship has never been settled although she in good faith endeavored to procure a settlement thereof, as hereinbefore alleged. Said defendant denies that prior to his becoming such administrator that he unlawfully took possession of said guardianship estate.

Further answering, this defendant alleges that he is entitled to have a legal settlement of said guardianship estate either by said appeal or by the probate court, or this honorable court prior to turning over said estate to the complainant, or anybody else, that what the complainant is entitled to is an accounting as to said guardianship and which accounting this defendant stands ready willing and anxious to have as the administrator of the said Guadalupe Perea de Harrison.

43 Further answering, this defendant denies that the withholding of said guardianship estate from said complainant either by said Guadalupe Perea de Harrison or this defendant as alleged in said bill has resulted in great loss and damage and waste to said estate of said minor, in the ways and manner alleged in said bill, or in any loss, damage and waste in any way or manner whatsoever. And said defendant denies that the said complainant is entitled to any damage or any expense for counsel fees; or otherwise, as alleged and claimed by him in his said bill.

Further answering, defendant alleges that the said complainant is not entitled to any relief whatever in a court of equity, and has not in and by his said bill stated any case entitling him to such relief, and said defendant further alleges that upon a full and fair accounting by the said complainant as to his liability to the estate of the said Jose L. Perea, Second, for an account of assets in his hands as one of the administrators of the estate of Jose Leandro Perea, Sr., deceased, for which neither he nor his co-administrators have ever accounted, the said complainant would be found indebted to the estate of the said Jose L. Perea, Second, in a very large sum of money, and in a very much larger sum than any interest he has or can have as heir-at-law of the said Jose L. Perea, Second, in the estate of the said Jose L. Perea, Second, and defendant further alleges that the estate of the said Jose L. Perea, Second, is not indebted in any sum whatever, and that the estate of

the said Jose Leandro Perea, Sr., is likewise not indebted in any sum whatever, and that the time for filing claims against both estates has long since passed, and all such claims are barred and all that is necessary to fully settle both of said estates is to

ascertain upon an accounting what is due to each of the distributees and heirs-at-law of the said Jose Leandro Perea, Sr., and Jose L. Perea, Second, if anything, and that a decree be rendered in favor of such distributees and heirs-at-law; and defendant further alleges that the complainant and the defendants to this bill are all of such heirs and distributees, except Jesus M. Perea, one of the defendants named herein, who has died since the filing of this bill, and upon whose estate as defendant is informed and believes, there has as yet been no administration. And defendant further alleges that said complainant is not entitled to any decree against this defendant individually or as administrator of the estate of Guadalupe Perea de Harrison, because as hereinbefore alleged, he was indebted to the said Jose L. Perea, Second, at the time of his death, for a large amount of the assets of the estate of Jose Leandro Perea, Sr., deceased, the father of said Jose L. Perea, Second, and because as this defendant alleges, the said complainant was likewise indebted to the said Guadalupe Perea de Harrison, at the time of her death for the assets of said estate of Jose Leandro Perea, Sr., for which said assets neither the said complainant nor his co-administrators Jesus M. Perea and Mariano Perea have ever fully accounted to either of the said Jose L. Perea, Second, or the said Guadalupe Perea de Harrison as his guardian or to the said Guadalupe Perea de Harrison individually, and on account of which said failure to account the said Guadalupe Perea de Harrison and this defendant as her husband brought suit in this honorable court on the 24th day of February, A. D. 1888, against the said complainant and his co-administrators, which said suit is entitled Guadalupe Perea de Harrison, *et al.*, against Jesus M. Perea, *et al.*, and is still pending, being number 2610 upon the docket of this court. And

this defendant further alleges that he and the said defendant, Grover William Harrison, the minor son of himself and the said Guadalupe Perea de Harrison, have succeeded to all the interest and rights of the said Guadalupe Perea de Harrison in and to the assets of the said estate.

Wherefore by reason of the premises, this defendant alleges that said complainant will not be entitled to a decree for anything upon said accounting, but defendant alleges that he is ready and willing to pay any sum for which he or the estate of the said Guadalupe Perea de Harrison may be found liable on said accounting.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and will-

ing to aver, maintain and prove as this honorable court shall direct and said defendant claims the same benefit of a demurrer to this bill as if he had expressly demurred thereto, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM B. CHILDERS AND
EUGENE A. FISKE,
Solicitors for Defendant Harrison.

Endorsed: No. 2943. Territory of New Mexico, county of Bernalillo. Pedro Perea, adm'r, *et al.*, vs. George W. Harrison *et al.* Answer of George W. Harrison, individually and as administrator of the estate of Guadalupe Perea de Harrison. Filed in my office this 29th of Aug., 1890. Chas. F. Hunt, clerk. W. B. Childers and E. A. Fiske, sol's for def't Harrison.

Said motion for leave to file cross bill being in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, {
County of Bernalillo. }

In the District Court, Second Judicial District.

PEDRO PEREA, Administrator, *et al.* }
vs. }
GEORGE W. HARRISON *et al.* }

To the Honorable William D. Lee, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof:

Now comes the defendant, George W. Harrison, individually and as administrator of the estate of Guadalupe Perea de Harrison, deceased, and asks leave of this honorable court to file a cross-bill against the above-named complainant and his co-administrators, and the other defendants in this cause.

The purpose of which said cross-bill is to charge the complainant, Pedro Perea, with assets in his hands as one of the administrators of the estate of Jose Leandro Perea, Sr., deceased, for which he and his co-administrators of said estate are responsible, and in which said estate Jose L. Perea, Second, deceased, and Guadalupe Perea de Harrison, deceased, were interested in as distributees of the estate of said Jose Leandro Perea, Sr., deceased, and from whom this defendant, George W. Harrison, claims an interest.

WILLIAM B. CHILDERS AND
EUGENE A. FISKE,
Solicitors for Defendant George W. Harrison.

Endorsed: No. 2943. Territory of New Mexico, county of Bernalillo. Pedro Perea, adm'r, *et al.*, vs. G. W. Harrison *et al.* Motion for leave to file cross-bill. Filed in my office this 29th day of Aug., 1890. Chas. F. Hunt, clerk. W. B. Childers and E. A. Fiske, sol's for def't Harrison.

And thereafter upon the 6th day of September, A. D. 1890, the following proceedings, among others, were had and entered of record, to wit:

PEDRO PEREA, Adm'r, etc.	} No. 2943.
vs.	
GEORGE W. HARRISON, Adm'r, et al.	

Comes now complainant and files exceptions to answer of defendants. Said exceptions to answer being in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO,	}
County of Bernalillo.	

In the District Court of the Second Judicial District, Territory of New Mexico.

PEDRO PEREA, Adm'r, &c.,	} Equity.
vs.	
GEORGE W. HARRISON et al., Defendants.	

Complainant, by his solicitor, Needham C. Collier, comes now and excepts to the joint and several answer of George W. Harrison, as administrator of the estate of Guadalupe Perea de Harrison, deceased, to the bill in the above-stated cause for impertinence in the said answer, and the portions of said answer specified and specially excepted to for impertinence are as follows, to wit:

First. That portion of said answer beginning with the words "And said defendant" on line 23 page 2, down to line 13 inclusive on page 3.

48 Second. That portion of said answer beginning with the words "and defendant" on line 23 of page 5, down to and including the word "debt" on line 29 of said page 5.

Third. The following words on lines 10 and 11 on page 8 of said answer, to wit: "And his co-administrators of the estate of Jose Leandro Perea, Sr., deceased."

Fourth. That portion of said answer beginning with the words "And said" in line 17 on page 9, down to and including line 2 on page 10.

Fifth. That portion of said answer beginning with the words "And said" on line 7 on page 11, down to and including the word "court" in line 26 on page 12.

Wherefore complainant prays that his exceptions for impertinence be allowed and that each and every of the portions of the said answer above specified and excepted to be stricken therefrom.

NEEDHAM C. COLLIER,
Complainant's Solicitor.

Endorsed: No. 2943. Territory of New Mexico, second judicial district, county of Bernalillo. Pedro Perea, adm'r, &c., plaintiff, vs. G. W. Harrison et al., defendants. Exceptions to answer. Filed in my office this 6th day of Sep., 1890. Chas. F. Hunt, clerk. Needham C. Collier, Albuquerque, N. M., attorney for compl't.

And thereafter, at a regular term of the district court of the second judicial district of the Territory of New Mexico, in and for the county of Bernalillo, in the said district, begun and held on the 10th day of November, A. D. 1890, at the court-house in said county, the following proceedings, among others, were had and entered of record on the 13th day of the said term, it being the 24th day of November. A. D. 1890.

Present: The Honorable William D. Lee, associate justice of the supreme court of the Territory of New Mexico, and judge of the second judicial district court, thereof, presiding.

PEDRO PEREA, Adm'r, &c.,
vs.
 GEO. W. HARRISON, Adm'r, *et al.* } No. 2943.

Now comes respondent Harrison and by leave of court files cross-bill herein. Which said cross-bill is in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, }
 County of Bernalillo. }

In the District Court of the Second Judicial District of the Territory of New Mexico for the County of Bernalillo for the Trial of Causes Arising under the Laws of the Territory, at the November, A. D. 1890, Term Thereof.

PEDRO PEREA, Complainant,
vs.
 GEORGE W. HARRISON *et als.*, Defendants. }

Cross-bill of Respondent George W. Harrison Individually and as Administrator of the Estate of Guadalupe P. de Harrison, Deceased.

To the Honorable William D. Lee, associate justice of the supreme court of the Territory and judge of the second judicial district court thereof:

Your orator, George W. Harrison, individually and as administrator of the estate of Guadalupe Perea de Harrison, deceased, and one of the respondents in the above-entitled cause, by leave of the court first had and obtained, files this, his cross-bill, against the complainant, Pedro Perea, and the respondent, Mariano Perea, administrators of the estate of Jose Leandro Perea, deceased, and as surviving administrators of Jose L. Perea, 2nd, and individually, and against Jose L. Perea, Benicio F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo and Justo Armijo, her husband, Soledad Perea de Castillo and Justiniano Castillo, her husband, Josefa Perea de Castillo and J. M. Castillo, her husband, Filomena Perea de Otero and Mariano S. Otero, her husband, Barbara Perea de Yrisarri and Jacobo Yrisarri, her husband, Cesaria Perea de Hubbell and Sydney A. Hubbell, her husband, the respondents in the above-entitled cause, and respectfully represent unto your

honor that Pedro Perea, the complainant in the above-entitled cause, exhibited in this honorable court on the 3rd day of April, A. D. 1890, his bill of complaint against your orator, George W. Harrison, individually and as the administrator of the estate of Guadalupe Perea de Harrison, deceased, and against the other respondents therein named, thereby praying that an accounting may be had and taken in that behalf of all the moneys, goods, property and effects of Jose L. Perea, Second, deceased, of whose estate Guadalupe Perea de Harrison, deceased, and the complainant, Pedro Perea, were appointed administratrix and administrator, and the said complainant, Pedro Perea, in and by his said bill alleged that the property and effects of the said Jose L. Perea, Second, were in the hands of the said Guadalupe Perea de Harrison, deceased, upon whose estate letters of administration have been issued to your orator, and praying also that an accounting as to said estate should be had, and that your orator should be held responsible therefor, and that the same be settled up and distributed.

51 Your orator further represents that the said Jose L. Perea, Second, deceased, was the son of the late Jose Leandro Perea, deceased, and that said Jose Leandro Perea died on or about the 21st day of April, 1883, and left said Guadalupe Perea de Harrison surviving him as his widow, and said Jose L. Perea, Second, son of said Jose Leandro Perea and Guadalupe Perea de Harrison, also survived him.

Your orator further represents that the said complainant, Pedro Perea and Jesus M. Perea, now deceased, and Mariano Perea, administered upon the estate of the said Jose Leandro Perea, and that they have never accounted for, or fully settled said estate, as your orator hereinafter more fully alleges.

And your orator further alleges that the said Jose L. Perea, Second, and Guadalupe Perea de Harrison, both now deceased, were entitled to receive large amounts of money and property from said complainant and his co-administrators of the estate of Jose Leandro Perea, deceased, which they never received, and your orator avers that the said Mariano Perea, one of said administrators, is a brother of the complainant, Pedro Perea, in this cause.

Your orator further alleges, that subsequent to the decease of the said Jose Leandro Perea, he intermarried with the said Guadalupe Perea de Harrison, the surviving widow as aforesaid, and that the said Guadalupe Perea de Harrison succeeded to the interest, or a portion of the interest, of the said Jose L. Perea, Second, in the estate of the said Jose Leandro Perea, and that through and by said Guadalupe Perea de Harrison, your orator also succeeds to an interest in said estate, and to the interest of the said Guadalupe Perea de Harrison in and to the estate of Jose L. Perea, Second, and is

52 entitled to call upon the said administrators, as aforesaid, for a settlement of the same.

And your orator further alleges that prior to the bringing of the said suit by the said Pedro Perea, against your orator and others, as aforesaid, your orator and Guadalupe Perea de Harrison had exhibited their bill of complaint against said Jesus M. Perea,

now deceased, and complainant, Pedro Perea, and Mariano Perea, administrators of the estate of Jose Leandro Perea, deceased, and against Josefa Perea de Castillo and J. M. Castillo, her husband, Soledad Perea de Castillo and Justiniano Castillo, her husband, Filomena Perea de Otero and Mariano S. Otero, her husband, Beatriz Perea de Armijo and Justo Armijo, her husband, Barbara Perea de Yrisarria and Jacobo Yrisarri, her husband, Benicio F. Perea, Jose L. Perea, Jacobo Perea, Cesaria Perea de Hubbell and Sydney A. Hubbell, her husband, and therein and thereby alleged as follows, and your orator hereby repeats said allegations and charges in said bill exhibited by your orator and said Guadalupe Perea de Harrison, hereinbefore referred to, and make- said allegations and charges a part of this cross-bill.

That heretofore, to wit, on the — day of —, A. D. 1842, the said late Jose Leandro Perea, deceased, intermarried with Maria Dolores Longina Chaves, in due form of law, and thereafter lived together as man and wife up to the — day of —, A. D. 1877, when the said Maria Dolores Longina Chaves, wife of the said Jose Leandro Perea, departed this life intestate, leaving her, surviving, as her sole heirs-of-law, under the laws of the Territory of New Mexico, six daughters, as follows: Josefa, Soledad, Filomena, Beatriz, Cesaria and Barbara, and six sons as follows: Jesus Maria, Mariano, Pedro, Benicio F., Jose Leandro and Jacobo.

53 That at the date of the said marriage between said Jose

Leandro Perea and Maria Dolores Longina Chaves, the said Jose Leandro Perea had brought into the marriage community a large amount of property, consisting of real and personal property, acquired by him by inheritance, bequest and other means, consisting of real property, land and improvements thereon, situated in the Territory of New Mexico, amounting to the full value of, to wit, one hundred thousand dollars (\$100,000), and personal property of the value of, to wit, three hundred thousand dollars; that at the date of the said marriage of the said Jose Leandro Perea, deceased, and Maria Dolores Longina Chaves, deceased, she owned and possessed in her own right, and brought into the marriage community, real property situated in the Territory of New Mexico, of the full value of, to wit, thirty thousand dollars, and personal property of the full value of, to wit, thirty thousand dollars;

That upon the said marriage the said property of the said Jose Leandro Perea, deceased, and Maria Dolores Longina Chaves, so mentioned as aforesaid, became and was the property of the marriage community, of the marriage existing between the said Jose Leandro Perea, deceased, and Maria Dolores Longina Chaves, as aforesaid, and so continued to remain the property of the said parties, to which large accretions and additions were made by the industry and labor of the said Jose Leandro Perea and said Maria Dolores Longina Chaves, until the said property so contributed and having become a part of the community property, of said marriage, had increased so that the real property belonging to the said Jose Leandro Perea and Maria Dolores Longina Chaves, upon the — day

of —, A. D. 1877, was of the full value of three hundred
 54 thousand dollars, and the personal property was of the full
 value of five hundred thousand dollars. That all of the said
 real and personal property so existing, owned and controlled by the
 said Jose Leandro Perea, deceased, and said Maria Dolores Longina
 Chaves, at the date last aforesaid, except the amounts as aforesaid
 brought into the said marriage community, was of gain and increase
 of the said property, and from other means, of the said marriage
 community, and belonging to and was owned under the laws of
 this Territory, in equal parts by the said Jose Leandro Perea, de-
 ceased, and said Maria Dolores Longina Chaves, as ganancial or
 acquest property of the said marriage community; that on, to wit,
 the — day of —, A. D. 1877, last aforesaid, the said Maria Dolores
 Longina Chaves died intestate, as aforesaid, leaving her, surviving,
 as her sole heirs-at-laws, twelve children, the fruits of said marriage,
 to wit, six daughters as follows: Josefa, who is now the wife of Jesus
 Castillo; Soledad, who is now the wife of Justiniano Castillo; Filo-
 mena, who is now the wife of Mariano S. Otero; Beatriz, who is now
 the wife of Justo Armijo; Cesaria, who is now the wife of Sydney
 A. Hubbell; and Barbara, who is now the wife of Jacobo Yrisarri;
 and six sons, to wit, Jesus M. Perea, Mariano Perea, Pedro Perea,
 Benicio Perea, Jose Leandro Perea and Jacobo Perea.

That at the time of the death of the said Maria Dolores Longina
 Chaves, the acquest property so belonging to the said marriage com-
 munity and partnership consisted of both real and personal prop-
 erty, acquired during the continuance of said marriage, and that
 the real property so acquired was of the full value of three hundred
 thousand dollars, and said personal property so acquired and
 55 belonging to the said marriage community was of the full
 value of five hundred thousand dollars; the one-half of all
 said property being upon the date of the death of the said Maria
 Dolores Longina Chaves, vested absolutely in the said twelve heirs
 and children, as aforesaid, of the said Maria Dolores Longina Chaves,
 in equal proportion, less the debts of said marriage community,
 which these complainants are informed and believe did not amount
 in the aggregate to a total sum greater than, to wit, thirty thousand
 dollars, leaving as the total of acquest property so belonging and
 vested in the said twelve children of the said Jose Leandro Perea,
 deceased, and Maria Dolores Longina Chaves, his wife, after the
 payment of the said community of partnership debts of said mar-
 riage, amounting, as these complainants are informed and believe,
 to the full value of, to wit, one hundred and forty dollars, and no
 more; that thereafter on, to wit, the — day of —, A. D. 1878, the
 said Jose Leandro Perea, deceased, intermarried with Guadalupe P.
 Harrison, one of the complainants, according to the form, rights
 and ceremonies of the Catholic Church, and so continued to live
 together as man and wife, up to the second day of April A. D. 1883,
 that with the said marriage last aforesaid, between Jose Leandro
 Perea and said Guadalupe P. Harrison, there were born two children,
 to wit, Jose Leandro Perea, Second, born on the — day of —,
 A. D. 1879, and Julian Perea, born on the — day of —, A. D. 1883.

That afterwards, to wit, on the second day of April, A. D. 1883, the said Jose Leandro Perea departed this life, and these complainants are informed and believe that the said Jose Leandro Perea, at his decease, left a verbal will, but whether the said verbal will was in the due form of law, and a valid and binding instrument
56 under the laws of this Territory, these complainants are not advised, but these complainants so far as they are now advised, regard said verbal will as the will of the said Jose Leandro Perea, and as conveying and disposing of property of which he, the said Jose Leandro Perea, deceased, died possessed, at the date aforesaid. But those complainants further show unto your honor, that they are advised by counsel and believe that the said will if effective, and a legal instrument under the laws of the Territory, was a legal instrument for the purpose, and no other, of conveying or disposing of such property and estate, as the said Jose Leandro Perea was possessed of in his own right, at the date of his death as aforesaid, and these complainants state that under the said verbal will, a copy whereof, as the same was probated in the office of the probate clerk, of and for the county of Bernalillo and Territory of New Mexico, is herewith attached, marked Exhibit "A," provided for the disposition in a manner therein stated, of forty-five thousand dollars, par value of stock of the First National Bank of Santa Fe, town and county of Santa Fé, in the Territory of New Mexico, as will more fully appear by an inspection of said will, and copy thereof, herewith filed and made a part of this bill of complaint.

And these complainants further show to your honor that of the said increase of the said stock of the said First National bank, a part thereof, to wit, the increase amounting to the sum of about twenty-five thousand dollars, was the gain and increase of said stock, between the date of the intermarriage of the said Jose Leandro Perea, deceased, with this complainant, Guadalupe P. Harrison, and the death of the said Jose Leandro Perea, as aforesaid. And

57 these complainants are advised by counsel and believe that of the said increase and gain from the said stock of the said

First National bank, as aforesaid, one-half thereof vested in and belonged, at the date of the death of the said Jose Leandro Perea, when the said verbal will became effective, to this complainant, Guadalupe P. Harrison, and that of the said twelve thousand five hundred dollars of increase, which these complainants are advised, was at the date of the death of the said Jose Leandro Perea, kept separate and apart by the said Jose Leandro Perea, from the balance of his said estate, so as to be easily traced and identified; that of the said twelve thousand five hundred dollars, one-half of the said acquest property arising from the said stock and the increase thereof, belonged at the date of the death of the said Jose Leandro Perea, absolutely to this complainant, Guadalupe P. Harrison, and being so, the property of the said complainant, Guadalupe P. Harrison, was beyond the control of the said late Jose Leandro Perea, so that he could not bequeath by will, either verbal or written, and vest the same, or any part thereof, in any heir or person,

but the same belonged solely and absolutely, as her personal property, to the said complainant, Guadalupe P. Harrison.

And these complainants further show unto your honor that a certain part and portion of the said stock of the First National Bank of Santa Fe, as aforesaid, was acquired by the said Jose Leandro Perea in his lifetime, and during the existence of the marriage relation between the said Jose Leandro Perea, deceased, and this complainant, Guadalupe P. Harrison; and said stock so acquired during the said marriage was, to wit, 250 shares, of the full par value of, to wit, twenty-five thousand dollars, and by virtue of the same having been acquired during the continuance of said marriage, and marriage partnership and community, a one-half thereof belonged to, and upon the death of the said late Jose Leandro Perea, became vested in this complainant, Guadalupe P. Harrison, as her share and interest, under the laws of this Territory, in the acquest property and gain of the marriage community. And this complainant is advised by counsel, and believes that a one-half thereof was at the date of the death, as aforesaid, of the said Jose Leandro Perea, the sole and individual property of this complainant, Guadalupe P. Harrison, and that the same, nor any part thereof, could be conveyed or encumbered in any manner by any will made or executed, written or verbal, of the said Jose Leandro Perea.

And these complainants further show unto your honor that the said Jose Leandro Perea, Second, son of the said deceased Jose Leandro Perea, and this complainant, Guadalupe P. Harrison, departed this life aged — years, on the — day of August, A. D. 1887, intestate, leaving, surviving him, as his sole heir-at-law, under the laws of this Territory, this complainant, Guadalupe P. Harrison; and that the said Julian Perea, departed this life intestate, leaving surviving him, as his sole heir-at-law, under the laws of this Territory, said complainant, Guadalupe P. Harrison, by virtue whereof, this complainant, Guadalupe P. Harrison, became and was upon the respective dates of the deaths of the said Jose Leandro Perea, Second, and Julian Perea, entitled to all and singular the property, estate and effects in them vested, or to which they were entitled, as the sons of the said Jose Leandro Perea, deceased.

These complainants further show unto your honor that on, to wit, the — day of —, A. D. 1883, the said defendants, Jesus Maria Perea, Mariano Perea and Pedro Perea, were appointed by the probate judge of the county of Bernalillo and Territory of New Mexico, pretended administrators, with the will annexed of the said estate of the said Jose Leandro Perea, deceased, and thereafter made and filed an affidavit and bond, as required by law, and the order of said probate judge, a true copy of said pretended affidavit and bond being filed herewith, marked Exhibits "B" and "C" and hereby made a part of this bill of complaint; that thereafter, the said Jesus Maria Perea, Mariano Perea and Pedro Perea entered upon and assumed to act in the performance of the duties of administrators of the said estate, of the said Jose Leandro Perea, deceased, under and by virtue of the said pretended

appointment and bond as aforesaid, and thereupon proceeded to collect debts due to the said estate of the said Jose Leandro Perea, and to pay out and distribute moneys and other personal property, and to divide and set apart interests in divers real property, belonging to and forming a part of the estate of the said Jose Leandro Perea, deceased, at the date of his death. And these complainants charge the fact to be, that the said Jesus Maria Perea, Mariano Perea and Pedro Perea, in the said distribution and setting apart of the said real property, and any and all divisions made by them of said real property, so belonging to said estate, acted wholly without authority of law; and that as to the said personal property and estate, so assumed by them to be collected and paid out under the said pretended letters of administration and appointment of said Jesus Maria Perea, Mariano Perea and Pedro Perea, committed great waste and destroyed a large portion of the said estate by various acts and doings, unlawfully and inequitably; that the said pretended administrators charged exorbitant fees for
60 their services as such administrators of said property, and so collected and now retain all such fees belonging to the said estate, and which by law should be distributed in part to your complainant, and in part to your complainant as widow of the said late Jose Leandro Perea, and as sole heir-at-law of her said children, Jose Leandro Perea, Second, and Julian Perea, which said sum of money these complainants state to be not less than sixty thousand dollars. That said pretended administrators failed to inventory or account for a large sum of money, and large and valuable interests in real and personal property belonging to the said estate, which said money, real and personal property, so unaccounted for by the said pretended administrators, amounts to the full value of one hundred thousand dollars (\$100,000.00). That the said pretended administrators have by neglect in the collection of accounts, lost to the said estate a very large sum of money, interest in the property, real and personal, to the full value of twenty thousand dollars (\$20,000.00); that the said pretended administrators have, without authority of law, compromised and settled without any consideration, valid and good obligations and debts due to the said estate, of the full value of forty thousand dollars (\$40,000.00) for a sum not to exceed the sum of four thousand dollars (\$4,000.00), which said sum of forty thousand dollars were valid debts which might have been at the time of the said compromise, ever since have been, and now are collectable against the creditor or creditors so indebted to the said estate of the late Jose Leandro Perea.

Your complainants further state that the said pretended administrators have expended large amounts of the acquet and community property, belonging to and a part of acquet property
61 as aforesaid, between the said Jose Leandro Perea and said complainant, Guadalupe P. Harrison, in the purchase of real property, whereby the full sum of eighteen thousand dollars (\$18,000.00) of the said acquet property had been unlawfully and fraudulently converted into worthless real property, with the design

and purpose of defrauding this complainant, Guadalupe P. Harrison, of her rights to the said money, and one-half thereof as acquest property, and converting the same into real property so that the same may descend to the heirs-at-law of the said Jose Leandro Perea, deceased, to the benefit of the said pretended administrators, as heirs-at-law of the said Jose Leandro Perea, deceased, and another heir-at-law, Beatrice Perea, and her husband, Justo Armijo, which said Justo Armijo from the first day of January, A. D. 1885, to the first day of January, 1887, was the probate judge of said county of Bernalillo, Territory of New Mexico, before whom said pretended administrators made divers and sundry pretended reports of the property and effects claimed to be in their hands as such administrators of the said estate of the late Jose Leandro Perea, deceased, and before whom, acting as such probate judge, a pretended final settlement was pretended to have been made by the said pretended administrators of all and singular the estate of the said Jose Leandro Perea, deceased.

And your complainants further show unto your honor, that the said pretended administrators and the said Justo Armijo, probate judge, as aforesaid, and one of the defendants to this bill, acting together conclusively, to injure and defraud this complainant, Guadalupe P. Harrison, did, on or about the 11th day of December, A. D. 1886, the following fraudulent and inequitable acts of and concerning the estate and settlement thereof, that is to say,

62 that on or about the 11th day of December, A. D. 1886, aforesaid, the said pretended administrators made a pretended final report, which said pretended final report, and all other pretended reports made by the said pretended administrators to the said probate court, were made without notice of time or place, or without any opportunity being given to this complainant, Guadalupe P. Harrison, of the time when the same were submitted to the probate court, or when the same were about to be approved by the said probate court, and the said Justo Armijo, as aforesaid, probate judge of the county of Bernalillo, and one of the defendants to this bill of complaint, in conspiracy to defraud this complainant, Guadalupe P. Harrison, did fraudulently and inequitably on, to wit, the 11th day of December, A. D. 1886, and when no term of the said probate court was by law fixed or appointed, proceeded to approve, as such probate judge, the final report and account of the said pretended administrators, of said estate of said Jose Leandro Perea, and further fraudulently and inequitably, and in pursuance of the said conspiracy, as aforesaid, fraudulently pretended, as probate judge of the county of Bernalillo, to discharge the said pretended administrators and their sureties from all obligation on account of said estate of Jose Leandro Perea, as administrators and distributees thereof, under and by virtue of the bond filed by them as aforesaid. And complainants further show unto your honor, that they are advised by counsel and believe that the said bond so filed by the said administrators, as aforesaid, was a valid and binding obligation upon them, and each of them, whether the said appointment to the said administration was or was not valid, because as these com-

63 plainants charge, the said pretended administrators were as to said bond, administrators of their own wrong; which said bond, the said Justo Armijo, pretending to act as probate judge of the said county of Bernalillo, was delivered up to the said pretended administrators, and the original of which said bond is not within the control of these complainants, nor has this complainant, Guadalupe P. Harrison, any knowledge or means of knowledge, other than as aforesaid, in whose custody the said bond of the said administrators now is, as the same cannot be found among the records of the said probate court.

These complainants further show to your honor that the said pretended administrators filed in the said probate court, while the said defendant, Justo Armijo, was the judge thereof, divers pretended reports and statements, wherein the said pretended administrators claimed to have reported some portion of the property claimed by them to be in their control and possession as such administrators of the said estate of said Jose Leandro Perea, but the said pretended administrators, heirs as aforesaid, and the said Justo Armijo, probate judge, as aforesaid, and one of the defendants to this bill of complaint, took and removed from the files of said office, the bond filed by them in said court as such administrators, but a copy of said bond as the same appears recorded, and the pretended statements, as they appear in the office of the said probate judge, are herewith filed, marked Exhibits "B," "D," "E," and "—" and made a part of this bill of complaint, which said exhibits, complainants ask leave to file so soon as copies thereof can be made from the records thereof.

These complainants further show unto your honor, that a large part of the personal property and of the debts and obligations due and owing to the said Jose Leandro Perea, during his life time, were

64 kept in books for that purpose, owned and kept by the said Jose Leandro Perea, the same being books of account, memoranda and other statements, pertaining to the estate of the said Jose Leandro Perea, deceased, with some considerable portion thereof in the handwriting of the said Jose Leandro Perea, deceased, all of which said books or account, papers, documents and memorandas were wrongfully taken possession of and kept from the date of said pretended appointment as administrators, and are now kept and held by the said pretended administrators or some one of them, secretly, and so that they could not, and cannot, be examined by these complainants. And these complainants charge that the said books of account, papers, and documents, so wrongfully and fraudulently held by the said pretended administrators, are and have been so held, with a view and purpose of depriving this complainant of an examination of the same, and that she might not be advised to the full extent of the said property and estate of the said Jose Leandro Perea, and thereby be unable to assert her rights to such interest therein as she is by law entitled to receive.

And your complainant, Guadalupe P. Harrison, further states to your honor that she has at divers times and occasions, requested the said pretended administrators or some one of them to exhibit to

her and to permit her to examine the said books of account, documents and memoranda, so belonging to, and showing the condition thereof, of the said estate of the said Jose Leandro Perea, but that the said pretended administrators have hitherto refused and now refuse to produce the said books of account, documents and papers, or permit said complainant to examine and inspect them, by reason of the said fraudulent and inequitable acts and proceedings, this complainant is unable to detail and particularly set forth in
65 a specific manner, all and singular the rights, interest and claims, payable and due to them from the said estate, as with an inspection of the said documents, papers and books of account thereof, they might and could do in this, their bill of complaint.

These complainants further show unto your honor that the said pretended administrators have fraudulently and inequitably failed to collect or account for a large number of sheep owned by the said Jose Leandro Perea, at the date of his death, and then belonging to his estate; and these complainants are informed and believe that the number of sheep so unaccounted for by the said pretended administrators and said pretended reports, amount to eighty thousand head of sheep, and are of the full value of ninety thousand dollars (\$90,000.00). Your complainants further show unto your honor, that one of the said pretended administrators, Pedro Perea, either by himself, or with the other two pretended administrators, brought suit for the recovery of a certain piece of real estate in the town and county of Bernalillo, as aforesaid, and for the possession thereof, against Francisco Perea, which said piece of real estate, belonged to and was a part of the estate of the said Jose Leandro Perea, as appears by a deed thereof, a true copy of — complainants ask leave to file herewith, and mark Exhibit “—” and make it a part hereof, which said suit was prosecuted by the said Pedro Perea, and recovery of the possession of the said real property had, in the district court, for the county of Bernalillo, aforesaid, which said property was recovered in the name of said Pedro Perea, and these complainants are advised and believe that the said real property so recovered, as aforesaid, belonged to the said estate of the late Jose Leandro Perea, deceased, is now claimed by the said Pedro Perea, and as his
66 sole and separate property, complainants are informed and believe that he has sold a portion of said property, and that the said Pedro Perea threatens and gives out that the said property belongs to him, and threatens to sell, incumber and dispose of the balance of said property.

Also that the said pretended administrators have charged against said estate, and deducted from the amount which they claim to have received from and on account of said estate, large sums of money for traveling and other expenses, fees of attorneys, and many other fees charged for, which the estate was not in any manner liable or accountable, and these complainants further show to your honor that a number of said expenses so paid out of the moneys belonging to the said estate of the late Jose Leandro Perea, the sum of three thousand dollars or upwards, the exact amount of which these complainants cannot now state, but pray leave to insert as they shall

be advised as to said amounts, was expended in and about the carrying on of an election contest, brought by Jose Leandro Perea, Junior, in a certain contest had in the year A. D. 1883, for the office of probate clerk for the county of Bernalillo; and in a certain other contest brought by the said Justo Armijo, against one Bernardo Valencia, which suits were tried after the death of the said Jose Leandro Perea, for the office of county commissioner of Bernalillo, which said Justo Armijo and Jose Leandro Perea, Junior, are two of the defendants, to this bill of complaint, and are two of the heirs-at-law of the said Jose Leandro Perea, deceased as aforesaid.

These complainants further state, that the said pretended administrators, have paid out and expended of the moneys so wrongfully received by them as the pretended administrators of the said estate of the said Jose Leandro Perea, deceased, large sums of money
67 in payment of their private debts, and private debts of other persons, the exact amount of the debts these complainants are not able now to state, but pray leave that when the same shall be discovered, to insert them in this, their bill of complaint. These complainants are informed and believe that the amount so expended and wrongfully paid out of the proceeds of said estate is a large amount of money, to wit, the sum of twenty-five thousand dollars (\$25,000.00).

These complainants further state, that said pretended administrators have collected and taken possession of a large amount of choses in action and other debts belonging to the said estate of Jose Leandro Perea, which in their pretended returns were classified as bad debts, and after attempting to collect said debts have endeavored and sought to divide and distribute the said pretended debts between the heirs-at-law of the said Jose Leandro Perea, and this complainant, Guadalupe P. Harrison, and by which said distribution have inequitably and wrongfully set apart to this complainant, Guadalupe P. Harrison, a much larger share and amount of the said bad debts, than under the legal and proper distribution of said estate would and should be borne or charged to this complainant; whereby the said complainant, Guadalupe P. Harrison, has received by the said pretended distribution, by the said pretended administrators, a large amount of worthless accounts and debts in lieu and in place of moneys and other property belonging to the said estate, which she should and ought to have received; which said sum in bad debts so distributed to her in excess of any equitable and just share thereof, to which she might properly be charged, amount-in the aggregate to not less than ten thousand dollars (\$10,000.00), the aggregate
sum of said bad debts so distributed by the said pretended ad-
68 ministrators, being about fifty thousand dollars, whereas, the amount of bad debts which these complainants would state are uncollectable, and were at the time of such distribution, was the sum of — dollars. That at the date of the death of the said Jose Leandro Perea, he, the said Jose Leandro Perea, deceased, had in part distributed to his twelve children, born during the marriage of the said Jose Leandro Perea with the said Maria Dolores Longina Chaves, a portion of the property, real and personal, which belonged at the

time of the death of the said Maria Dolores Longina Chaves, to her, as property brought by her into the marriage community, of the said marriage between her and the said Jose Leandro Perea, deceased, and in part belonging to the estate of said Maria Dolores Longina Chaves, acquet and gain of the marriage community of the said Maria Dolores Longina Chaves and said Jose Leandro Perea, deceased, — which said part so distributed, these complainants have no knowledge or means of knowledge, except the said books of account, papers and documents in the hands of the said pretended administrators, and which are inaccessible to these complainants; but these complainants charge that at least one-half of the share of the property so belonging to the said Maria Dolores Longina Chaves, had been distributed. That before and after the death of the said Maria Dolores Longina Chaves, and before the death of the said Jose Leandro Perea, the said Jose Leandro Perea, had paid out and expended to the said Jesus Maria Perea, Mariano Perea, by way of advancements, much of their share of the said property belonging to said Jose Leandro Perea and Maria Dolores Longina Chaves, his wife, and that should upon their death belong to the said Jesus Maria

69 Perea and Mariano Perea, a very large sum of money, to wit, to the said Jesus Maria Perea, the sum of one hundred thousand dollars (\$100,000.00) and to the said Mariano Perea, the sum of fifty thousand dollars (\$50,000.00) which said sums of money so paid out and advanced to the said Jesus Maria Perea and Mariano Perea, and was a loan to the said Jesus Maria Perea and Mariano Perea and was so charged upon the books of account of said Jose Leandro Perea, deceased, now, and since the death of the said Jose Leandro Perea, in the possession and control of said pretended administrators; yet these complainants charge, that upon the said pretended and fraudulent settlement of the property and estate of the late Jose Leandro Perea, the said pretended administrators took no account whatever, nor endeavored in any manner to collect from the said Jesus Maria Perea and Mariano Perea, any part or share of the indebtedness so due by them to the said late Jose Leandro Perea and Maria Dolores Longina Chaves, his wife, but in the distribution, fraudulently and inequitably took and used the estate, and distributed the same of the said Jose Leandro Perea, without deducting said indebtedness or *or* any part thereof, and fraudulently and inequitably distributed to the said Jesus Maria Perea and Mariano Perea the same share and interest in the said estate of the said Jose Leandro Perea and Maria Dolores Longina Chaves, his wife, which they would have been entitled to by the amount reported as collected by the said pretended administrators, had they, the said Jesus Maria Perea and Mariano Perea, not been indebted to the said estate of Jose Leandro Perea, deceased, and his wife, Maria Dolores Longina Chaves, to the great injury of this complainant, Guadalupe P. Harrison, and by means whereof, the said Guadalupe P. Harrison has lost of acquet property, which should have been

70 distributed to her under the laws of this Territory, the full sum of forty thousand dollars (\$40,000.00) and by means whereof she has also lost of property belonging to the said estate of

the late Jose Leandro Perea, due and payable to her as sole heir-at-law of her sons aforesaid, Jose Leandro Perea, Second, and Julian Perea, the further sum of fifty thousand dollars (\$50,000.00).

These complainants further show unto your honor, that the said pretended administrators have in addition to the sheep not reported as aforesaid, and which belonged to the estate of the said Jose Leandro Perea, deceased, and wholly failed to account in any manner for a large number of improved sheep, to wit, twenty thousand head (20,000), of the full value of sixty thousand dollars (\$60,000.00) or if any of said sheep have been accounted for, in any manner, they have been accounted for by the said pretended administrators as of the value of one dollar per head, or about one-third part of their true valuation, and none of the same were distributed to or received by this complainant, Guadalupe P. Harrison, or by this complainant as heir-at-law of her two sons aforesaid, Jose Leandro Perea, Second, and Julian Perea.

These complainants further show unto your honor, that the said pretended administrators, according to their said pretended accounts have collected another large sum of money belonging to the said estate; that they so collected and held the same for a long time, to wit, about eighteen months, and that by reason of the said collection of said large sums of money, a part whereof belonged to this complainant in her own right and as sole heir-at-law of her said children, as aforesaid, amounted to about sixty thousand dollars

71 (\$60,000.00), by which said retention of said money and funds, as aforesaid, so belonging to this complainant, Guadalupe P. Harrison, she, the said Guadalupe P. Harrison, lost the interest and accumulation thereon, amounting to not less than nine thousand dollars (\$9,000.00), which said pretended administrators kept and retained, and appropriated to their own sole and separate use, and have not accounted for to this complainant in any manner; which said sum of money and interest was so received by the said pretended administrators, and has since been held and used by them, and this complainant states that the said money so received and interest thereon was so held and used by the said pretended administrators, as trustees, and in trust for the sole use and benefit of this complainant, Guadalupe P. Harrison.

These complainants further show unto your honor that at the date of the death of the said Jose Leandro Perea, deceased, the total value of the real and personal property of all kinds, classes and description, then belonging to the estate of the said Jose Leandro Perea, was of the full value of one million dollars, as near as the same can be determined by these complainants, without an inspection of the books of account, deeds, papers and memorandum, now in the hands of the said pretended administrators, and which is inaccessible to these complainants, and that of which said property, the real property, as these complainants are informed and believe, was of the value of about two hundred thousand dollars (\$200,000.00).

And these complainants further show unto your honor that the amount of the acquet and ganancial property belonging to the marriage and partnership community of the said marriage of the

72 complainant, Guadalupe P. Harrison, with the said Jose Leandro Perea, deceased, was of the full value of three hundred thousand dollars, one-half thereof of which said acquest property, vested upon the death of the said Jose Leandro Perea, in and upon and so became the sole property of this complainant, Guadalupe P. Harrison, which said one-half of said acquest property, so belonged to said complainant, Guadalupe P. Harrison, was of the full value of one hundred and fifty thousand dollars; but that the said pretended administrators have paid over to the said complainant, Guadalupe P. Harrison, for and on account of said acquest — ganancial property, so due to said complainant, Guadalupe P. Harrison, the sum of forty-two thousand dollars, including bad debts distributed as aforesaid, and no greater or other sum; but that said pretended administrators have either fraudulently distributed or paid out, or now hold of the said acquest and ganancial property, so due to said complainant, Guadalupe P. Harrison, the full sum of, to wit, one hundred and twenty thousand dollars, which said pretended administrators now fraudulently and inequitably hold from said complainant, Guadalupe P. Harrison, and now and heretofore have refused, and now refuse, to deliver or pay over the same, or any part thereof, to this complainant, Guadalupe P. Harrison, although this complainant, Guadalupe P. Harrison, herself, and by her agents, have repeatedly requested the said pretended administrators to deliver and pay over the same to her, and for her use.

And these complainants further show unto your honor, that of the property and estate belonging to the said Jose Leandro Perea at the date of his death, as aforesaid, the amount and share thereof due, payable and deliverable to this complainant, Guadalupe P.

73 Harrison, for and on account of, and her two sons, deceased, the said Jose Leandro Perea and Julian Perea, and as sole heir-at-law of said sons, was at the date of the death of the said Jose Leandro Perea, deceased, of the full value of, and amounted to the sum of, one hundred thousand dollars, of which said sum so due and payable and owing to the said complainant, Guadalupe P. Harrison, for her, and on account of being sole heir of her two sons, as aforesaid, the said pretended administrators of the said estate of the late Jose Leandro Perea, have not paid to said sons any part thereof, nor have not paid to this complainant, Guadalupe P. Harrison, any greater or other sum than the sum of thirty-four thousand dollars (\$34,000.00), for and on account of the moneys and other property belonging to her as such heir-at-law, from the said estate of the late Jose Leandro Perea, deceased, which said balance due from the said estate of the late Jose Leandro Perea to this complainant, Guadalupe P. Harrison, for and on account of said estate belonging to her as heir of her said sons, as aforesaid, they, the said pretended administrators, either now hold fraudulently or inequitably, or have fraudulently and inequitably distributed, paid out or disposed of to some other person, who had no right to take, use, hold or enjoy the same. Whereby the said pretended administrators, or some one of them, now hold, or have disposed of fraudulently, inequitably and without right, and against the wishes, de-

sires and protests of said complainant, Guadalupe P. Harrison, the full sum of sixty-four thousand dollars (\$64,000.00), which said sum these complainants charge the said pretended administrators to owe at the date of the filing of this bill to this complainant, Guadalupe P. Harrison.

And these complainants further show to your honor that the said pretended Jesus Maria Perea, Mariano Perea and Pedro Perea,
74 refuse to pay over any part or share of the said balance, as aforesaid, so due to this complainant, Guadalupe P. Harrison, and refuse to deliver up any part or share of the property, real or personal, so belonging to this complainant, Guadalupe P. Harrison, as aforesaid, and this complainant believes that by reason of the said fraudulent and inequitable acts and doings of the said pretended administrators, the said estate of the late Jose Leandro Perea, deceased, so withheld and unaccounted for by the said pretended administrators, cannot, and will not, be fairly and honestly and equitably divided or settled, and paid over to this complainant, unless your honor shall appoint a receiver to take charge or receive and collect and distribute, under the order of this honorable court, such part and balance of the said estate of the late Jose Leandro Perea, as may be found to be due and owing and payable to this complainant, Guadalupe P. Harrison.

Your complainants further show unto your honor, that the said Jesus Maria Perea and Mariano Perea, are persons of no means and have no property, except it be some portion or part of the property of said estate of the late Jose Leandro Perea, deceased, fraudulently and inequitably distributed to themselves as administrators, as aforesaid, without first deducting therefrom the large sums due and owing by them to the said Jose Leandro Perea, as aforesaid.

And these complainants further state, that the said Jesus Maria Perea and Mariano Perea, openly state that the said property so fraudulently and inequitably distributed to themselves, and held as aforesaid is their own separate property, and threaten that they will sell, dispose of and encumber the same, and your complainants believe that they will so dispose of, sell and encumber said
75 property of this estate, so fraudulently held by themselves, unless they shall be restrained from so doing by the order and injunction of this honorable court, commanding them and each of them not to sell, dispose of or encumber any of said property, or any part thereof, until the further order of this court.

And these complainants further state and show unto your honor that they did at divers times and places, since the said pretended appointment of the said pretended administrators, and since the said pretended final report and pretended approval of the same, made by them as aforesaid, to and concerning the said estate of the late Jose Leandro Perea, applied to the said pretended administrators, Jesus Maria Perea, Mariano Perea and Pedro Perea, and requested them and each of them to come to a fair and full accounting with this complainant, Guadalupe P. Harrison, of and concerning the amount and value of the proceeds and property of said estate of said Jose Leandro Perea, deceased, which by law and of right belonged to this

complainant, Guadalupe P. Harrison, as acquest property, and as the sole heir of her two sons as aforesaid, but said pretended administrators, Jesus Maria Perea, Mariano Perea and Pedro Perea, have hitherto failed and refused, and still do fail and refuse, to come to any kind of a settlement with this complainant, Guadalupe P. Harrison, as to the said amount or amounts so due and owing to her, or any part thereof, or in any manner to correctly account with her concerning said estate, or any part thereof, to which she was in law or equity entitled, or in any manner accede to the said reasonable requests and demands of this complainant, Guadalupe P. Harrison, all of which acts and doings and proceedings by the said Jesus Maria Perea, Mariano Perea and Pedro Perea, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of this complainant in the premises.

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And your orator further represents that in and by said bill he alleged and prayed for relief as follows:

Inasmuch therefore as your complainants are without remedy in the premises, under the strict rules of the common law, but only in a court of equity, where matters of this character are alone recognizable or relievable, these complainants pray:

First. May it please your honor to grant the writ of summons in chancery, directed to some proper person of the county of Bernalillo to serve the same, the sheriff of the county of Bernalillo being a party to this suit, commanding the said person that he summons the said defendants, and commanding the said defendants, Jesus Maria Perea, Pedro Perea and Mariano Perea, administrators of the estate of Jose Leandro Perea, deceased, and said Jesus Maria Perea, Pedro Perea, Mariano Perea, Josefa Perea de Castillo and Jesus Castillo her husband, Soledad Perea de Castillo and Justiniano Castillo, her husband, Filomena Perea de Otero and Mariano S. Otero, her husband, Beatriz Perea de Armijo, and Justo R. Armijo, her husband, Barbara Perea de Yrisarri and Jacobo Yrisarri, her husband, Benicio F. Perea, Jose Leandro Perea, Jacobo Perea, Cesaria Perea de Hubbell and Sydney A. Hubbell, her husband, to appear before the said court, on the first day of the next March, A. D. 1888, term thereof, to be held at the court-house in the town of Albuquerque, county of Bernalillo, aforesaid, and that said defendants, and each of them, be required, full, true and perfect answer to make, to the utmost of their several respective knowledge, remembrance, information and belief, full true and perfect answer to each and all of matters, things, statements and allegations in this bill contained, without oath, the answer under oath being hereby expressly waived.

77

Second. May it please your honor to grant unto your orators an order and injunction of this honorable court, to be directed to the said Mariano Perea and Jesus Maria Perea, commanding them, and each of them not to pay out, dispose of or encumber any of the property and effects received by them from the pretended administrators or distributees, in any manner, to them, or either of them, by themselves and the said Pedro Perea, belonging to or in

any manner which formed a part of said estate of the said late Jose Leandro Perea.

Third. That the said Jesus Maria Perea, Mariano Perea and Pedro Perea, be commanded by an order of this honorable court to forth with deliver to the clerk thereof, all the deeds, papers, documents, books of account and memorandas in their possession and control or in any manner belonging to the estate of the said Jose Leandro Perea at the time of the death of the said Jose Leandro Perea, and which at any time came into the possession of the said Jesus Maria Perea, Mariano Perea and Pedro Perea, or either of them, since the death of the said Jose Leandro Perea.

Fourth. That by the order and decree of this honorable court the said pretended acts and doings of the said Pedro Perea, Jesus Maria Perea and Mariano Perea, as pretended administrators of the said estate of the late Jose Leandro Perea, be annulled and declared invalid, void and of no effect.

Fifth. That the said defendants, Jesus Maria Perea, Mariano Perea and Pedro Perea, administrators of the estate of Jose Leandro Perea, deceased, and said Jesus Maria Perea, Mariano Perea and Pedro Perea, Josefa Perea de Castillo and Jesus Castillo, her husband, Soledad Perea de Castillo and Justiniano Castillo, her husband, Filomena Perea de Otero and Mariano S. Otero, her husband, Beatriz Perea de Armijo and Justo Armijo, her husband, Barbara Perea de Yrisarri and Jacobo Yrisarri, her husband, Benicio F. Perea, Jose Leandro Perea, Jacobo Perea, Cessaria Perea de Hubbell and Sydney A. Hubbell, her husband, be by the order and decree of this honorable court, decreed to pay over to this complainant, Guadalupe P. Harrison, such part or share of the said estate of the said Jose Leandro Perea, as shall be found to have been inequitably and unlawfully distributed by the said pretended administrators, or have come into their hands, or the hands of any or either of them, and which upon a just and fair settlement of the said estate shall be found to be due to this complainant, Guadalupe P. Harrison.

Sixth. That the said pretended approval and acts of the said Justo Armijo, as aforesaid, and said pretended accounts, and said pretended final settlement of the said pretended administrators, in the probate court for the county of Bernalillo, Territory of New Mexico, be, by the order and decree of this honorable court, annulled and held to be void and of no effect.

Seventh. That the said payment of the said moneys as in said bill stated by the said pretended administrators, for acqurest property, as aforesaid, belonging to this complainant, Guadalupe P. Harrison, for and on account of the purchase of real estate or of any stock or bonds representing real estate as in said bill stated, be, by the order and decree of this honorable court, decreed to be invalid and the same set aside, so far as to the interest and claim of this complainant, Guadalupe P. Harrison, upon the said estate of the late Jose Leandro Perea, deceased, be concerned.

Eighth. That the said Jesus Maria Perea, Mariano Perea and Pedro Perea, be decreed to convey to the said complain-

ant, Guadalupe P. Harrison, such part or interest of the said property and real estate belonging to the said estate of Jose Leandro Perea, deceased, recovered by them, or either of them, in the suit aforesaid, against Francisco Perea, as shall upon such accounting and settlement of this bill, of said estate, to be found to belong to or owing to this complainant, Guadalupe P. Harrison.

Ninth. That an accounting be taken and had by and under the direction of this honorable court, of all the property, real and personal, money, choses in action and debts belonging to or in any manner pertaining to the estate of the said Jose Leandro Perea, deceased, and that this honorable court distribute the share to this complainant, Guadalupe P. Harrison, in the said estate ascertained and decreed to be paid over to her, said complainant, Guadalupe P. Harrison. And that upon said accounting these complainants may be allowed their reasonable costs, including solicitors' fees expended in this litigation.

Tenth. And that upon the accounting hereinbefore prayed for, an accounting be also had as against all the defendants hereinbefore named of all and singular the assets and proceeds of the said estate received by them and each of them, and that all, and every, and each of them be decreed to pay to the complainant, Guadalupe P. Harrison, such sums as may be justly coming to her upon a proper settlement and distribution of the said estate, whether the same be in her own right or as heir-at-law of her deceased children, Jose Leandro Perea, Second, and Julian Perea. And that upon said accounting, these complainants be allowed their reasonable
80 costs, including solicitors' fees, expended in this litigation.

Eleventh. And may it please the court to appoint some fit and proper person receiver of the estate and assets of the said Jose Leandro Perea, deceased, upon the making of a decree removing the said Jesus Maria Perea, Mariano Perea and Pedro Perea, as administrators, or annulling the pretended administration of said estate, to take charge of such assets of said estate as have not been properly administered and distributed, and hold the same until finally administered and distributed under the order and decree of this honorable court.

Twelfth. That a final decree may be entered in this cause for a final settlement of the said estate of said Jose Leandro Perea and a final distribution thereof.

Thirteenth. And may it please your honor to grant unto your orators such other and further relief in the premises as the nature of the case may require, and to your honor shall seem meet and proper.

Fourteenth. May it please this honorable court to grant unto these complainants a temporary writ of injunction, addressed to each of the said defendants, the said Jesus Maria Perea, Mariano Perea and Pedro Perea, administrators of the estate of Jose Leandro Perea, deceased, restraining and enjoining them, and each of them, the said Jesus Maria Perea, Mariano Perea and Pedro Perea, as administrators of the said Jose Leandro Perea, deceased, from paying out, disposing of, or encumbering any of the property and

effects received by them from the assets of said estate, or which in any manner formed any part of the estate of the said Jose Leandro Perea, deceased, until the further order of this honorable court.

Wherefore, your orator prays that the said bill be taken and considered as a cross-bill in this suit, and that he may have the
81 relief therein prayed for in this cause.

And may it please your honor to grant unto your orators the writ of summons in chancery, directed to some proper person in the county of Bernalillo, to serve the same, the sheriff of the county of Bernalillo being a party to this suit, commanding such person that he summons the said defendants, and commanding said defendants, Mariano Perea and Pedro Perea, administrators of the estate of Jose Leandro Perea, deceased, and the said Mariano Perea and Pedro Perea, Josefa Perea de Castillo, and Jesus Castillo, her husband, Filomena Perea de Otero and Mariano S. Otero, her husband, Beatriz Perea de Armijo and Justo Armijo, her husband, Soledad Perea de Castillo and Justianiano Castillo, her husband, Barbara Perea de Yrisarri and Jacobo Yrisarri, her husband, Benicio F. Perea, Jose Leandro Perea, Jacobo Perea, Cessaria Perea de Hubbell and Sydney A. Hubbell, her husband, to be and appear before the said court on the first day of the next November, A. D. 1890, term thereof, held at the court-house in the town of Albuquerque, county of Bernalillo and Territory of New Mexico, and that the said defendants, and each of them, be required full, true and perfect answer to make, to the utmost of their several respective knowledge, remembrance, information and belief, to each and all of the matters, things, statements and allegations in this bill contained, without oath, the answer under oath being hereby expressly waived.

And upon taking the accounting prayed for by the complainant, Pedro Perea, in his original bill, that an accounting may also be had and taken as prayed for in said bill herein asked to be taken and considered as a cross-bill of the property, real and personal, moneys,

82 choses in action, and debts belonging to and in any manner pertaining to the said estate of Jose Leandro Perea, deceased, and that this honorable court distribute the share of this cross-complainant which he is entitled to have and receive by reason of the interest of Guadalupe P. Harrison, deceased, and Jose L. Perea, Second, in the said estate, and that upon the said accounting this cross-complainant may be allowed his reasonable costs and counsel and solicitors' fees expended in this litigation, and that he may have all the relief prayed for in said original bill filed herein as a cross-bill, which said Guadalupe P. Harrison, deceased, and Jose L. Perea, Second, may have had and to which he may be entitled to as succeeding to their interest, and as administrator of the estate of Guadalupe P. de Harrison, she having been administratrix of the estate of Jose L. Perea, Second, and that all the defendants mentioned in said original bill may be decreed to account for any portion of said estate which they may have received, and which belongs to the said Guadalupe P. Harrison, and said Jose L. Perea, Second, both deceased, and which they were entitled to receive, and

matters and things in cross-complainant's said cross-bill to be true in manner and form as therein set forth and alleged, doth demur there to, and for cause of demurrer sheweth here to the court :

First. That the matters and things in said cross-bill alleged and set forth, and in and about which relief is prayed in and by said cross-bill, are in nowise connected with the matters and things in the original bill in said cause and the relief prayed for therein.

Second. That the relief prayed for in and by said original bill is of matters relating solely and entirely to the estate of Jose L. Perea, 2nd, deceased, and that prayed for by said cross-bill is of matters relating to another and distinct estate, with which the said Pedro Perea, as administrator of the estate of Jose L. Perea, Second, deceased, has no interest or concern.

Third. That it appears in and by said cross-bill that it is sought thereby to consolidate two separate and distinct suits now pending in this honorable court, which are in no way or manner connected with each other, and in which the parties are not the same.

Fourth. That relief is sought in and by said cross-bill against Pedro Perea and Mariano Perea, as administrators of one Jose L. Perea, deceased, who, as such administrators, are neither parties complainant nor defendant in said original bill.

Fifth. That the said cross-bill relates to matters between parties other than complainant as administrator of the estate of Jose L. Perea, Second, deceased, and said complainant should not be embarrassed thereby, or this record encumbered by this cross-bill.

Sixth. That said cross-bill is multifarious.

Seventh. That said cross-bill is without equity.

Eighth. That said cross-bill is in many other respects informal, insufficient and defective.

Wherefore, the said Pedro Perea, individually and as administrator of Jose L. Perea, Second, deceased, prays judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said cross-bill, or any of the matters or things therein contained. And prays hence to be dismissed with his reasonable costs in this behalf sustained.

N. C. COLLIER,

Solicitor for Pedro Perea, Individually and as Administrator.

I certify that in my opinion the foregoing demurrer is well founded in law.

N. C. COLLIER,

Solicitor for said Perea, Individually and as Administrator.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

N. C. Collier, of lawful age, on oath, says that he is solicitor in said cause for the said Pedro Perea, individually and as administrator of Jose L. Perea, 2nd, deceased, and that said demurrer is not filed for delay.

N. C. COLLIER.

Sworn to and subscribed before me this 23rd day of December, 1890.

[SEAL.]

CHAS. F. HUNT, *Clerk.*

Endorsed: No. 2943. District court, Bernalillo county.
86 Pedro Perea, adm'r, &c. *versus* G. W. Harrison, adm'r, *et al.*
Chancery. Cross-bill. Demurrer of Perea to cross-bill.
N. C. Collier, sol. for Pedro Perea. Filed in my office this 23rd day
of Dec., 1890. Chas. F. Hunt, clerk.

And thereafter, at a regular term of the district court of the second judicial district, of the Territory of New Mexico, in and for the county of Bernalillo, in the said district, begun and held on the 5th day of October, A. D. 1891, at the court-house in said county, the following proceedings, among others, were had on the fourth day of the said term, it being the 8th day of October, A. D. 1891.

Present: The Honorable William D. Lee, associate justice of the supreme court of the Territory of New Mexico, and judge of the second judicial district court, thereof, presiding.

PEDRO PEREA, Adm'r, etc.,	} No. 2943.
<i>vs.</i>	
GEO. W. HARRISON, Adm'r, &c., <i>et al.</i>	

This cause is heard on demurrer to cross-bill and exceptions to answer filed herein, and the argument not being concluded this cause is passed until called by the court.

And thereafter, upon the seventh day of the said term it being the 12th day of October, A. D. 1891, the following proceedings, among others, were had and entered of record, to wit:

PEDRO PEREA, Adm'r, etc.,	} No. 2943.
<i>vs.</i>	
GEO. W. HARRISON, Adm'r, <i>et al.</i>	

87 Now again come the parties herein, and the hearing of this cause on demurrer to cross-bill and exceptions to answer continues, and being concluded, the court not being fully advised in the premises, takes the matter under consideration.

And thereafter, upon the 19th day of the said term, it being the 26th day of October, A. D. 1890, the following proceedings, among others, were had and entered of record, to wit:

PEDRO PEREA, Adm'r, etc.,	} No. 2943.
<i>vs.</i>	
GEO. W. HARRISON, Adm'r, <i>et al.</i>	

This cause having been heretofore heard and the court being fully advised, doth order that the exceptions to answer herein filed be sustained; and the defendants are given leave to amend.

And thereafter, upon the 27th day of October, A. D. 1891, there was filed in the office of the clerk of said court, a replication in the words and figures as follows, to wit :

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court.

PEDRO PEREA, Administrator, <i>et al.</i> , Com- plainant,	} No. 2943. Chancery.
<i>vs.</i>	
GEO. W. HARRISON, Adm'r, &c., <i>et al.</i> , De- fendants.	

The replication of Pedro Perea, administrator of the estate of Jose L. Perea, Second, deceased, and individually, to the answer of George W. Harrison, administrator of the estate of Guadalupe P. Harrison, deceased, and individually.

88 This repliant, saving and reserving unto himself all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing, whatsoever, in the said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct and humbly prays as in and by his said bill he has already prayed.

COLLIER & MARRON,
Solicitors for Compl't.

Endorsed : No. 2943. In district court, Bernalillo county. Pedro Perea, adm'r, &c., *vs.* G. W. Harrison, adm'r, *et al.* Replication. Filed in my office Oct. 27th, 1891. Chas. F. Hunt, clerk. Collier & Marron, compl't's solicitors.

And thereafter, upon the 28th day of October, A. D. 1891, there was filed in the office of the clerk of said court, a motion in the words and figures as follows, to wit :

TERRITORY OF NEW MEXICO, }
 County of Bernalillo. }

In the District Court.

PEDRO PEREA, Adm'r, &c., <i>et al.</i> , Complain-	}	No. 2943. Chancery.
ants,		
<i>vs.</i>		
GEO. W. HARRISON, Adm'r, &c., <i>et als</i> , De-	}	
fendants.		

89 Now comes the complainant by his solicitors, Collier & Marron, and shows here to the court that Grover William Harrison, a minor, defendant in the said suit, has been duly served with process in said cause, as appears by the return in said cause duly filed, and he moves the court to appoint a guardian, *ad litem*, for said minor defendant.

COLLIER & MARRON,
Solicitors for Compl't.

Endorsed: No. 2943. In district court, Bernalillo county. Pedro Perea, adm'r, etc., *vs.* George W. Harrison, *et als*. Filed in my office Oct. 28th, 1891. Chas. F. Huut, clerk. N. C. Collier, sol. for P. Perea.

And thereafter, upon the twenty-fourth day of the said term, it being the 31st day of December, A. D. 1891, the following proceedings, among others, were had and entered of record, to wit:

PEDRO PEREA, Adm'r, etc.,	}	No. 2943.
<i>vs.</i>		
GEO. W. HARRISON, Adm'r, <i>et al.</i>		

Come now defendants herein and give notice of appeal from the court's order sustaining exceptions to answer, &c.

And thereafter, upon the twenty-seventh day of the said term, it being the fourth day of November, A. D. 1891, the following proceedings, among others, were had and entered of record, to wit:

PEDRO PEREA, Adm'r, etc.,	}	No. 2943.
<i>vs.</i>		
GEO. W. HARRISON, Adm'r, <i>et al.</i>		

90 This day the court appoints H. L. Warren guardian *ad litem* for minor defendant herein, and complainant is ordered to furnish copy of bill to said guardian.

And thereafter, upon the 44th day of the said term, it being the 24th day of November, A. D. 1891, the following proceedings, among others, were had and entered of record, to wit:

PEDRO PEREA, Adm'r, etc.,
vs.
 GEO. W. HARRISON, Adm'r, *et al.* } No. 2943.

Now comes H. L. Warren, heretofore appointed guardian *ad litem* for minor defendant, Grover William Harrison, and gives notice that he accepts the said appointment, and is by the court granted until next Saturday to file answer herein.

And thereafter, upon the forty-eighth day of the said term, it being the 28th day of November, A. D. 1891, the following proceedings, among others, were had and entered of record, to wit :

PEDRO PEREA, Adm'r, etc.,
vs.
 GEO. W. HARRISON, Adm'r, *et al.* } No. 2943.

Now comes H. L. Warren, Esq., guardian *ad litem* for minor defendant Harrison and files answer, and moves the court for leave to file cross-bill.

And thereupon, on the same day, to wit, the 28th day of November, A. D. 1891, there was filed in the office of the clerk of the said court, answer of Grover William Harrison, in the words and figures as follows, to wit :

91 TERRITORY OF NEW MEXICO, }
 County of Bernalillo. }

In the District Court of the Second Judicial District in and for the County of Bernalillo and Territory of New Mexico.

PEDRO PEREA, Administrator of Jose L. }
 Perea, Second, Complainant,
vs. } No. 2943. Chancery.
 GEORGE W. HARRISON *et al.*, Defendants. }

The answer of Grover William Harrison, infant under the age of twenty-one years, by H. L. Warren, his guardian *ad litem*, to the bill of complaint of Pedro Perea, complainant.

The defendant answering by his guardian *ad litem*, says that this defendant, Grover William Harrison, is an infant of tender years, of the age of — years, or thereabouts, and he therefore submits his rights and interests in the matters in question in this cause, to the tender consideration and protection of this honorable court, and prays strict proof of the matters alleged in said bill of complaint.

GROVER WILLIAM HARRISON,
 By H. L. WARREN,
His Guardian ad Litem.

Endorsed : No. 2943. Territory of New Mexico, second judicial district, county of Bernalillo. Pedro Perea, adm'r, *vs.* Geo. W.

Harrison *et al.* Answer of Grover Wm. Harrison. Filed in my office Nov. 28th, 1891. Chas. F. Hunt, clerk. Warren, Fergusson & Bruner.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court.

92 PEDRO PEREA, Administrator, }
vs. } No. 2943.
G. W. HARRISON *et al.* }

Report of Special Master.

To the Honorable William D. Lee, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof:

The undersigned, special master, heretofore appointed by the court to take the proofs of the respective parties to the above-entitled suit and return the same to the court with his opinion thereon, begs leave to submit the following

Report.

Upon due notice the complainant and the respondent, Geo. W. Harrison, appeared before me in person and by their respective counsel, and the witnesses produced, being first duly sworn, their testimony was reduced to manutype and signed by said witnesses respectively, except Nezario Gonzales (whose testimony it was agreed by counsel for the respective parties shall be taken and considered as though signed by said witness Gonzales); all of which said testimony is hereto attached and made a part of this report.

From said testimony I find the following

Facts.

I.

Jose Leandro Perea, Segundo, was the son of Jose L. Perea, Sr., deceased, and Guadalupe Perea (afterwards the wife of the defendant, George W. Harrison), also deceased.

II.

93 Said Jose Leandro Perea, Segundo, died on the 25th day of August, 1887, being then about eight years of age.

III.

The heirs-at-law of said Jose Leandro Perea, Segundo, were his mother, the said Guadalupe Perea de Harrison, and his half-brothers and half-sisters named as codefendants in the bill of complaint in this cause filed.

IV.

On the 23rd day of July, 1884, Guadalupe Perea was duly appointed guardian of said minor, Jose Leandro Perea, Segundo, and as such guardian from time to time thereafter became possessed of certain money and personal property belonging to the estate of said minor, which said property was as stated below :

1884.		757 head of sheep, worth.....	\$757 00	
1885.				
Jan.	27.	Cash.....	\$22 92	
Jan.	27.	" \$1,420.82 Mexican money at 75c.....	1,136 65	
Jan.	27.	"	127 51	
				1,277 08
Mar.	6.	"		108 49
Mar.	16.	"		496 71
April	9.	"		10 49
June	10.	"		3,907 73
Dec.	10.	"		4,058 02
1886.				
Feb.	22.	"		8 57
June	10.	"		4,208 32
Dec.	11.	"	128 22	
Dec.	11.	"	1,308 12	
Dec.	11.	Sheep, 577, worth....	577 00	
				2,013 34
94				
1887.				
Jan.	27.	Cash.....	\$454 17	
Jan.	27.	"	66 86	
Jan.	27.	"	7 14	
				528 17
Feb.	1.	"	160 00	
Feb.	1.	"	144 00	
				304 00
March	10.	"	130 20	130 20
Aug.	1.	"		160 00
Dec.	10.	"		4,794 47
Dec.	21.	"		21 42
1888.				
Aug.	1.	" for 16 shares bank stock, at \$133.00...	2,128 00	
Aug.	1.	" for interest of minor in M. Gonzales' vineyard, sold to Mariana Perea....	66 66	
				\$24,978 67

V.

The rental value of land at Algodones, N. M., belonging to said minor, is \$50.00 per annum, and from 1884 to 1892 amounts to.....	\$400 00
The rental value of land belonging to said minor at Bernalillo was, for 1884 and 1885, \$50.00 per annum, and since that time \$175.00 per annum, amounting to.....	1,150 00

95

Making a total of rental values, which should be added to the above account, amounting to.....	1,550 00
Grand total.....	\$26,528 67

VI.

The credits to which Guadalupe Perea de Harrison, as guardian of said minor, is entitled (allowing \$500.00 per annum for the support and maintenance of said minor, which in the opinion of the master is sufficient to cover all such expenses, as well as the expenses of two trips taken for the benefit of the minor's health—the testimony of Pedro Perea and Mariano Perea being that \$25.00 or \$30.00 per month would be ample to support a child in Bernalillo, and the testimony of G. W. Harrison being that a large part of the expense of the trip to St. Louis was for clothing, which should be included in ordinary expenses, and there being no expense connected with either trip for doctors' bills) are as follows:

Amount allowed for support of minor from July 25, 1884, to August 25, including medical at- tendance prior to last sickness, and expenses of two trips, at \$500.00 per annum.....	\$2,000 00
Less amount received from administrators of estate of J. L. Perea, Sr.	500 00
	<hr/> \$1,500 00
Amount expended in improving Bernalillo property....	556 00
Amount paid for repairs on mill property.....	40 00
Doctors' bills and other expenses connected with	
96 last sickness and death of minor.....	480 00
Taxes paid for minor.....	691 80
	<hr/> \$3,267 80

VII.

George W. Harrison, the defendant, and Guadalupe Perea were married September 2nd, 1885.

VIII.

In 1887, after the death of Jose L. Perea, Segundo, Pedro Perea, the complainant herein, and Guadalupe Perea de Harrison, then

wife of George W. Harrison, the defendant, both applied for letters of administration upon the estate of said deceased minor, and thereafter such letters were duly granted to both of them by the probate court of Bernalillo county, and each qualified according to law.

IX.

On October 20th, 1889, Guadalupe Perea de Harrison died, and from the date of her appointment as administratrix of the estate of said deceased minor to the time of her death, she refused to account to or co-operate with her co-administrator, Pedro Perea, the complainant herein.

X.

On January 6th, 1890, George W. Harrison, respondent herein, was appointed administrator of the estate of Guadalupe Perea de Harrison, deceased, and from that time to the present has refused, and still refuses, to account to Pedro Perea, the surviving administrator of the estate of Jose L. Perea, Segundo, deceased; but retains said estate, mingling the funds with his own, having the same deposited to his individual credit in the bank, claiming that Guadalupe Perea de Harrison, his late wife, did not hold said estate by virtue of her appointment as administratrix thereof, but
97 because of her appointment as guardian of said minor.

XI.

The ruling rate of interest in New Mexico since 1884 has been and is twelve per cent. per annum, and loans can be made at that rate upon first-class security.

XII.

After her appointment as administratrix of the estate of Jose L. Perea, Segundo, Guadalupe Perea de Harrison acted under the advice of her husband, George W. Harrison, the defendant herein, and said George W. Harrison acted for his wife in the management and control of said estate and in making reports to the probate court of the condition of said estate.

XIII.

Neither Guadalupe Perea de Harrison nor her husband, George W. Harrison, made any effort, so far as the testimony shows, to loan the funds of said estate, as required by law.

XIV.

Some of the funds of said estate, which were in the shape of paying investments, to wit, sheep and bank stock, were withdrawn from such investments and converted to cash, which produced very little or no income at all.

I find the law applicable to said facts to be as follows:

I.

The powers of Guadalupe Perea de Harrison, as guardian of Jose L. Perea, Segundo, ceased immediately upon the death of said ward.

II.

After her appointment as administratrix of the estate of Jose L. Perea, Segundo, Guadalupe Perea de Harrison held said estate as such administratrix, and not as guardian of said deceased minor.

98

III.

Section 1818 of the Compiled Laws of New Mexico, 1884, makes it the duty of a guardian to loan funds of the ward beyond what may be necessary for the support and maintenance of the ward, and section 1019 makes such guardian liable for interest if he fails to loan the money of his ward, as aforesaid.

IV.

After the death of Guadalupe Perea de Harrison, Pedro Perea, the surviving administrator, was the only person entitled to the possession of the estate of said Jose L. Perea, Segundo, and G. W. Harrison by retaining possession of said estate and refusing to deliver the same over to said administrator became liable for the proper management and control thereof.

V.

As to the time when interest shall commence to run against guardians holding funds of wards, I find the rule to be, generally, six months from the receipt of such funds, and that six months is ample time within which to procure an order of the court, as required by section 1018, above referred to.

VI.

Williams, in his work on Executors, page 1569, 2nd volume, states the law as follows: "And it should seem to be now settled that an executor who, being a trader and having of course an account with a banker, places the assets at his banker's in his own name, by that means increasing the balances in his favor, acquiring additional credit, and enjoying in his business the advantages naturally arising from that circumstance, must be considered as having employed the money for his own benefit, and must, therefore, be charged with interest at 5l. per cent." That was at a rate higher than under ordinary circumstances.

99

The same rule, it appears to me, will apply in this case, and the current rate of interest being twelve per cent., it would work manifest injustice to permit a person not entitled to the possession of funds to retain them, and account, only when compelled by the court to do so, to the rightful owner of such funds at a lower rate of interest.

Applying said rule as to the time when interest should commence to run, and calculating the same at the rate of twelve per cent. per annum, I find that there is due on October 1, 1892, from G. W. Harrison, the defendant, to Pedro Perea, the complainant, in his capacity as administrator of the estate of Jose Leandro Perea, Segundo, the amounts shown in the following statement, less the credits hereinafter stated :

Date received.		Principal.	Interest.	Time.			Amount.
				Year.	Mo.	Day.	
1884.							
Dec. 30.....		\$757 00	\$659 58	7	3	....	\$1,716 59
1885.							
Jan. 27.....	\$22 29						
Jan. 27.....	1,136 65						
Jan. 27.....	117 51						
		1,277 08	1,073 90	7	2	3	2,350 98
March 6.....		108 49	91 63	7	....	24	200 48
March 16.....		496 71	417 93	7	....	14	914 64
April 9.....		10 49	8 77	6	11	21	19 26
June 10.....		3,907 73	3,191 30	6	9	20	7,099 03
Dec. 10.....		4,058 02	3,070 55	6	3	20	7,128 77
1886.							
Feb. 22.....		8 57	6 88	6	1	29	15 45
June 10.....		4,208 32	2,931 78	5	9	20	7,140 10
Dec. 11.....	128 22						
Dec. 11.....	1,308 12						
Dec. 11.....	577 00						
		2,013 34	1,280 50	5	3	19	3,293 84
1887.							
Jan. 27.....	454 17						
Jan. 27.....	66 86						
Jan. 27.....	7 14						
		528 17	327 98	5	2	3	856 15
Feb. 1.....	160 00						
Feb. 1.....	144 00						
		304 00	188 48	5	2	....	492 48
100 March 10.....		130 20	78 98	5	....	20	209 18
Aug. 1.....		160 00	89 90	4	8	....	249 90
Dec. 10.....		4,794 47	2,477 00	4	3	20	7,271 60
Dec. 21.....		21 42	10 98	4	3	9	32 40
1888.							
Aug. 1.....		2,128 00	936 32	3	8	....	3,064 32
Cash for interest of minor in Gonzales' vineyard.....							66 66
							\$42,031 45
To which should be added the rental value of land at Algodones.....						\$400 00	
Rental value of land at Bernalillo.....						1,150 00	
							1,550 00
							\$43,581 45

VII.

Said defendant is entitled to credits as follows, with interest at the rate of twelve per cent. per annum from the day each item was paid, to wit:

Aug. 1, 1884.....	\$40 00	\$38 80	8	1	.....	\$78 80
July 23, 1885.....	500 00	426 00	7	1	6	926 00
Nov. 1, 1885.....	205 50	166 45	6	9	.....	371 95
July 23, 1886.....	500 00	366 00	6	1	6	866 00
Nov. 1, 1886.....	512 48	150 86	5	11	7	363 34
Aug. 25, 1887.....	980 00	589 66	5	.....	5	1,569 66
Nov. 1, 1887.....	273 82	150 60	4	11	.....	424 42
						<hr/> \$4,577 17
To which should be added the amount expended for improving the Bernalillo land, upon which I have allowed no interest, because none was charged upon the rental value of said land.....						556 00
Total credits, with interest.....						<hr/> \$5,133 17
Leaving due from said George W. Harrison to said Pedro Perea, administrator, on October 1, 1892, a balance of.....						<hr/> \$38,448 28

VIII.

Said balance, after paying the costs and expenses of this suit, and the costs of administration, should be distributed as follows:

To G. W. Harrison, as administrator of the estate of Gaudalupe Perea de Harrison.....	13 26
To Grover William Harrison.....	1 26
101 To G. W. Harrison, interest of Filomena Perea de Otero.....	26 1
To G. W. Harrison, interest of Cessaria Perea de Hubbell.....	26 1
To G. W. Harrison, interest of J. M. Perea.....	1 26
<hr/>	
	17 26
To Jose L. Perea.....	1 26
To Benicio F. Perea.....	1 26
To Mariano F. Perea.....	1 26
To Jacobo Perea.....	26 1
To Pedro Perea.....	26 1
To Beatriz Perea de Armijo.....	26 1
To Soledad Perea de Castillo.....	26 1
To Josefa Perea de Castillo.....	26 1
To Barbara Perea de Yrisarri.....	26 1
<hr/>	
	9 26
<hr/>	
	26 26

The master would therefore recommend that the court order, adjudge and decree:

I.

That the said defendant, George W. Harrison, pay over to said Pedro Perea, as administrator of the estate of Jose L. Perea, Segundo, the above-stated balance of \$38,448.28.

II.

That said Pedro Perea, as such administrator, first pay the costs and expenses of this suit, including a fee of \$5,000.00 to the solicitors for the complainant, and a master's fee of \$1,500.00, the costs and expenses of administration; and the balance of said amount to pay and distribute to the various parties entitled thereto, as above set forth.

Respectfully submitted.

KARL A. SNYDER,
Special Master.

102 Said draft of master's report being endorsed in the words and figures as follows, to wit:

No. 2943. In district court, Bernalillo county. Pedro Perea, adm'r, vs. G. W. Harrison *et al.* Draft of report to which both parties objected. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

And thereafter, upon the 26th day of January, A. D. 1893, there was filed in the office of the clerk of said court objections to draft of master's report by defendant, with master's filing mark showing that they had been filed with him on the 19th day of October, A. D. 1892; which said objections are in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court.

PEDRO PEREA, Administrator, }
vs. } No. 2943.
G. W. HARRISON *et al.* }

Objections to Report of Special Master.

Now comes the defendant in the above-entitled cause, and objects to the draft of the report made by the special master, which draft it is proposed shall be made final, and for grounds of, objects

First. For that the said master has in and by his fourth finding of fact charged that Guadalupe Perea, deceased, became possessed of certain money and personal property belonging to the estate of said minor, which property said master states as a part of said fourth finding of fact, and said defendants object to it and other items charged by said report to have been received by the said Guadalupe

Perea, upon the ground that said finding is not sustained by
103 the evidence, and said defendants also object to said finding of fact in that the said master has not given credit to the said Guadalupe Perea for moneys paid out and expended by her for and on behalf of the said minor, and especially to the finding of sixty-six and $\frac{66}{100}$ dollars, on account of vineyard sold to Mariano Perea.

Second. For that the said master has in and by his fifth finding

of fact charges rental of land at Algodones from 1894 to 1892 four hundred dollars, and for rental at Bernalillo from 1884 to 1885 at eleven hundred and fifty dollars, upon the ground that said guardian is not accountable for rent collected upon land after death of said ward, and upon the further ground that the amounts of rental so found is not sustained by the evidence and is excessive.

Third. Defendant objects to the sixth finding of fact, for that the said master refused to allow the amounts claimed by defendants as credits to Guadalupe Perea de Harrison, as guardian for said minor, for support and maintenance of said ward, and for medical attendance and expenses of last sickness, and for which, and other items contained in said sixth finding of fact, the amounts allowed being not as much as the said Guadalupe Perea de Harrison was entitled to.

Fourth. Defendant objects to the ninth finding of fact, for that the said master found that the said Guadalupe Perea de Harrison, up to the time of her death, refused to account or co-operate with her co-administrator, Pedro Perea, the fact being that she offered and was ready and willing to settle her accounts as guardian, and have the property of said minor passed to the account of said administrators.

Fifth. Defendant objects to the tenth finding of fact, for
104 that the said master has found that the said George W. Harrison after his appointment as administrator of the estate of Guadalupe Perea de Harrison up to the present time, has refused and still refuses to account to Pedro Perea, the surviving administrator of the estate of Jose L. Perea, 2nd, deceased, but retains said estate, mingling the funds with his own and having the same deposited to his individual credit in the bank, claiming that said Guadalupe Perea de Harrison did not hold said estate by virtue of her appointment as administratrix, but by her appointment as guardian of said minor, it being necessary, as defendant contends, that the accounts of Guadalupe Perea de Harrison, as guardian, should be settled before the property could pass to the administrators.

Sixth. Defendant objects to the eleventh finding of fact, for that the said master has found that the ruling rate of interest in New Mexico since 1884 has been and is twelve per cent. per annum, and loans can be had at that rate upon first-class security, as not being sustained by the evidence, and being wholly immaterial.

Seventh. Defendant objects to the twelfth finding of fact, for that the said master has found that the said Guadalupe Perea de Harrison acted under the advice of her husband, the defendant herein, and that the said George W. Harrison acted for his wife in the management and control of said estate and in making reports to the probate court as to the condition of the estate, as not being sustained by the evidence and wholly immaterial.

Eighth. Defendant objects to the thirteenth finding of fact, for that the said master has found that neither Guadalupe Perea de Harrison, or her husband, George W. Harrison, made any effort to loan the funds of said estate, as required by law, is not sustained by the evidence and wholly immaterial.

105 Ninth. Defendant objects to the fourteenth finding of fact, for that the said master has found that some of the funds of said estate which were in the shape of paying investments, to wit, sheep and bank stock, were withdrawn from such investments and converted into cash, which produced very little or no income at all, as not sustained by the evidence and wholly immaterial.

Objections as to Findings of Law.

Defendants object to the first finding of law by said master, that the powers of Guadalupe Perea de Harrison, as guardian of Jose L. Perea, Second, ceased immediately upon the death of said ward, as not being correct, and insist that the law is that her power over the estate in her hands as guardian continued until the final settlement of her accounts as guardian.

Second. Defendants object to the second finding of law, that the said Guadalupe Perea de Harrison, after her appointment as administratrix of the estate of Jose L. Perea, Segundo, held such estate as administratrix and not as guardian of said deceased minor, as not correct, and insists that the law is that she held it as guardian until the final settlement of her accounts.

Third. Defendant objects to the third finding of law, that the statute of New Mexico makes it the duty of the guardian to loan funds of the ward and makes him liable for interest if he fails to loan the money of his ward, and insists that said section of the statute, 1018 Compiled Laws, makes it the duty of the guardian to lend it, provided the court directs him to do so.

Fourth. Defendant objects to the fourth finding of law, that after the death of Guadalupe Perea de Harrison, Pedro Perea, the surviving administrator, was the only person entitled to the possession of the estate of said Jose L. Perea, Segundo, and that G. W. Harrison, by retaining possession of said estate and refusing to deliver
106 the same to said administrator, became liable for the proper management and control thereof, and defendants insist that if there was any liability upon the part of G. W. Harrison it was from the indebtedness due from his intestate, and that he was liable only as administrator of the said Guadalupe Perea de Harrison, deceased, and not otherwise, for such indebtedness.

Fifth. Defendant objects to the fifth finding of law, that interest should commence to run from six months from the receipt of the funds, and that six months is ample time to procure an order of the court, as required by sec. 1018, and insists that it was not incumbent upon the guardian to procure such order.

Sixth. Defendant objects to the sixth finding of law and the citation from Williams on Executors therein contained, upon the ground that the same has no applicability to this case whatever, and that the law is that the guardian would be liable only for interest on funds in his hands at the rate fixed by the statute, and not otherwise, and that that is the measure of his liability.

And further objects to the application of the said rule of law as contended for by the master, to the state of the accounts of the said

Guadalupe Perea de Harrison and the defendant G. W. Harrison and to the charge of twelve per cent. interest thereon, as inconsistent with the evidence and not in accordance with the law.

Objects to the statement of account contained in said sixth finding of law to the charges therein contained, and each one of them, and especially to the charge of rental for land in Algodones, Bernalillo, and elsewhere, said land having passed direct to the heirs and not to the administrator.

107 Seventh. Defendant objects to the seventh finding of law, as to the credits given to the defendant, as not being all the credits they are entitled to as a matter of law and under the evidence, and not being sufficient in amount as to each item credited; and objects to the finding that Geo. W. Harrison, individually, was indebted to Pedro Perea, administrator, on October 1st, 1892, in any sum whatever.

Eighth. Defendant objects to the eight finding of law, wherein the said master finds the share which each one of the heirs of Jose L. Perea, Segundo, is entitled to in said estate.

Ninth. Defendant objects as to the recommendation of the master that a decree be rendered against the said George W. Harrison, that he pay over to Pedro Perea, as administrator of the estate of Jose L. Perea, Segundo, the said balance of \$38,448.28, upon the ground that the said George W. Harrison is not liable personally for said amount, and upon the further ground that the bill filed in said cause prays for a complete settlement and distribution of said estate, and that it would be idle ceremony to require George W. Harrison, owning seventeen twenty-sixths ($\frac{17}{26}$) of the estate, to turn his share over to Pedro Perea to be administered upon, when there are no debts outstanding against the estate, and it would seem to become the duty of the said Perea to repay said amount to the said Harrison, and the said bill prays only for a complete settlement of the estate.

Tenth. Defendant objects to the second recommendation of the master, that a fee of \$5,000.00 be allowed to the solicitors of the complainant, upon the ground that there is no law for allowing any such fee to solicitors, but that it is the duty of said complainant to

108 pay his own solicitors, or charge the same up against the estate in his hands as expenses incurred by him as administrator in the probate court.

Defendant objects to the master's fee of \$1,500.00 as being grossly excessive.

Eleventh. Defendant objects to the consideration of the testimony of the witnesses Pedro Perea and Mariano Perea, taken at the last sitting of the master, during the absence of the defendant's solicitors and when they could not be present and insist that said cause should have been adjourned until defendant's solicitors could have been present.

E. A. FISK AND
W. B. CHILDERS,
Solicitors for Defendant.

No. 2943. Territory of New Mexico, county of Bernalillo. In the district court, second judicial district. Pedro Perea, administrator, plaintiff, *vs.* G. W. Harrison *et al.*, def't-. Objections to draft of master's report. Filed October 19th, 1892. Karl A. Snyder, special master. William B. Childers, sol. for defendant-. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

And thereupon, on the same day, to wit, the 26th day of January, A. D. 1893, there was filed in the office of the clerk of said court objections to draft of report of master by plaintiff, with the master's filing mark, showing that they had been filed with him on the 24th day of January, A. D. 1893, said objections to draft of report being in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court.

PEDRO PEREA, Adm'r, }
vs. } No. 2943.
GEO. W. HARRISON *et al.* }

109 Now comes complainant, by his solicitors, N. B. Field and Collier & Marron, and objects to the draft of report in said cause for the reasons:

First. That the master should find as a matter of fact that the said Geo. W. Harrison has not in good faith withheld the estate of Jose L. Perea, Second, deceased, from the possession of the complainant as administrator, and that he has wrongfully caused this litigation and the expenses connected therewith.

Second. That the master should find as a matter of law that the expense of this litigation, including reasonable solicitors' fees, are chargeable to the portion of the estate belonging to said George W. Harrison, and that the said George W. Harrison should pay over to the said complainant, as administrator, statutory fees on the portion remaining in his hands, and the solicitors' fees and other expenses of this litigation, and that said draft should be so amended and corrected as to so provide.

Respectfully submitted.

N. B. FIELD,
COLLIER & MARRON,
Solicitors for Compl't.

Endorsed: No. 2943. Pedro Perea, adm'r, &c., *vs.* G. W. Harrison *et al.* Objections to draft of report. Filed Jan'y 24, 1893, and overruled for the reason that the report already covers the points objected to. Karl A. Snyder, special master. N. B. Field and Collier & Marron, pl'ff's solicitors.

And thereupon, on the same day, to wit, the 26th day of January, A. D. 1893, there was filed in the office of the clerk of said court by

the master defendants' objections to report of master, with the
 110 master's filing mark, showing that they had been filed with
 him on the 24th day of January, A. D. 1893, said objections
 to the report being in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, {
 County of Bernalillo. }

In the District Court.

PEDRO PEREA, Administrator, }
 vs. }
 G. W. HARRISON *et al.* }

Objections to Report of Special Master.

Now comes the defendant- in the above-entitled cause and objects to the draft of the report made by the special master, which draft it is proposed shall be made final, and for grounds of, objects:

First. For that the said master, as in and by his fourth finding of fact charged that Guadalupe Perea, deceased, as guardian of Jose L. Perea, 2nd, deceased, from time to time thereafter, became possessed of certain money and personal property belonging to said estate of said minor, which said property was as stated in said report. Defendant objects to said fourth finding of fact because the items charged therein are not shown by the evidence to have been so received, and the said finding is wholly unsupported by the evidence, and because said finding of fact does not give the said Guadalupe Perea credit for moneys paid out and expended by her for and on behalf of the said minor.

Second. Because the said master, as in and by his fifth finding of fact, failed to allow the said Guadalupe Perea de Harrison, deceased, and said defendant, credit for the expense of two trips taken for the benefit of the minor's health, and for a sufficient amount per
 111 month for the support and maintenance of said child, and has failed to allow other credits shown by the evidence, and because said finding, as made is not in accordance with the evidence, and said guardian and defendant being entitled to additional credits on that account.

Third. Defendant objects to the said master's eighth finding of fact, because the evidence does not sustain the finding, and that from the date of the appointment of said Guadalupe Perea as administratrix of the estate of said deceased minor to the time of her death, she refused to account to, or co-operate with her co-administrator, Pedro Perea, complainant in this cause, the fact being that she was entitled to a settlement of her accounts as guardian before turning over said estate.

Fourth. Defendant objects to the ninth finding of fact upon the ground that the same is not sustained by the evidence, and that the evidence does not show that the said George W. Harrison as from the date of said appointment as administrator of the estate of Gauda-

lupé Perea to the present time refused and still refuses to account to Pedro Perea, surviving administrator of the estate of Jose L. Perea, 2nd, and does not show that he retains said estate, mingling the funds with his own, etc., as in said finding alleged.

Fifth. Because said tenth finding of fact, that the said Gaudalupe Perea acted under the advice of her husband, George W. Harrison, and he acted for his wife in the management and control of said estate in making reports to the probate court of the condition thereof, is not sustained by the evidence and is wholly immaterial.

Sixth. Defendant objects to said eleventh finding of fact upon the ground that it is not sustained by the evidence, and that
112 no order was ever made by the probate court authorizing or requiring either the said George W. Harrison or Gaudalupe Perea de Harrison to loan out or invest the funds of said minor.

Seventh. Defendant objects to the twelfth finding of fact, upon the ground that the law did not require the guardian to keep the ward's funds invested in sheep and bank stock, but that it was their duty to change hazardous investments into cash, or other safer investments.

Defendant objects to the said master's finding of law as follows :

First. Objects to the first finding of law, that the powers of Gaudalupe Perea de Harrison as guardian of Jose L. Perea, Second, ceased immediately upon the death of said ward, because such is not the law.

Second. Objects to the second finding of law, that after the death of said Jose L. Perea, Segundo, the guardian held said estate as administratrix and not as guardian, because the same is not the law, and insists that she held the same as guardian until her accounts were finally settled.

Third. Objects to said third finding of law, as to what the statute provides, because it is not correctly stated, the statute only holding the guardian liable for failure to invest or loan out funds where an order is made by the court requiring an investment.

Fourth. Defendant objects to said fourth finding of law, because the same is not the law, to wit, that after the death of the said Gaudalupe Perea de Harrison, Pedro Perea, the surviving administrator, was the only person entitled to the possession of the estate of said minor, and that George W. Harrison, by retaining the possession of said estate and refusing to deliver the same over to said administrator, became liable for the proper management and
113 control thereof, in his proper capacity, but he insists that any claim whatever, if any, on account of the management and control and possession of said estate by the complainant, was only a charge against the estate of Gaudalupe Perea de Harrison in the hands of her administrator, and no charge against the administrator personally.

Fifth. Defendant objects to the fifth finding of law by said master in this, to wit, that the said master has charged up interest by striking balance more frequently than the law warrants, and that he has charged too much interest for that reason upon the estate, and tha

the same or funds, both principal and interest, is to be due, and the amount which complainant is entitled to receive is in excess of the amount shown due by the evidence, and that the whole finding is not supported by the evidence.

Sixth. Defendant objects to the sixth finding of law upon the ground that the said master has not allowed the defendant all the credits to which he is entitled, and that the evidence shows additional credits.

Seventh. Defendant objects to the seventh finding of law, that Pedro Perea, as administrator of the estate of Jose L. Perea, 2nd, is entitled to the statutory commission for receiving and paying out the whole balance, and defendant insists that the law is that he is only entitled to commission upon funds and property actually received and disposed of by him.

Eighth. Defendant objects to said eighth finding of law upon the ground that the said Pedro Perea is not entitled to receive commissions upon seven twenty-sixths of said balance as such administrator, and as shown by the statement contained in said finding.

Objections to Recommendations.

Defendant objects to the recommendations of said master, 114 to the first recommendation, that the said George W. Harrison be decreed to pay over to Pedro Perea nine twenty-sixths of the sum shown to be due on account of said minor's estate and the statutory commissions upon the remaining seventeen twenty-sixths, upon the ground that there has not been a full accounting of said estate in this case, and that the said Pedro Perea as such administrator is not entitled to commission upon seventeen twenty-sixths belonging to the said George W. Harrison.

Second. Defendant objects to the 2nd recommendation for the same reason set forth in the objection to the first recommendation.

Third. Objects to the third recommendation, that the said George W. Harrison be decreed to pay a solicitor's fee of \$5,000 to the complainants and the master a fee of \$1,500.00, because there is no authority in law authorizing a decree for complainant's solicitors' fees in this case, and because both of said amounts, to wit, the solicitors' fees of \$5,000 and master's fee of \$1,500, are excessive, even if authorized by law, and there was no evidence before the master as to what a reasonable solicitor's fee was, and insists that the master's fee should be divided equally between the parties to this suit, or in proportion to the interests of the respective parties, and should come out of the estate before any division of the same.

Defendant objects to the consideration of the testimony of the witnesses Pedro Perea and Mariano Perea, taken at the last sitting of the master, during the absence of defendant's solicitors, and when they could not be present, and insist that said cause should have been adjourned until defendant's solicitors could have been present.

E. A. FISKE AND
W. B. CHILDERS,
Solicitors for Defendant.

115 No. 2943. Territory of New Mexico, county of Bernalillo, in the district court, second judicial district. Pedro Perea, administrator, plaintiff, vs. G. W. Harrison *et al.*, defendant. Objections to report of master. Filed January 24, 1893, and overruled. Karl A. Snyder, special master. William B. Childers, solicitor for defendants.

And thereafter, upon the 14th day of February, A. D. 1893, there was filed in the office of the clerk of said court, the master's report with the testimony taken by him thereto attached, together with the exhibits which were heretofore, to wit, on the 26th day of January, filed in the clerk's office, said report and testimony and exhibits being in the words and figures as follows, to wit :

TERRITORY OF NEW MEXICO, {
County of Bernalillo. }

In the District Court.

PEDRO PEREA, Administrator, }
vs. } No. 2943.
G. W. HARRISON *et al.* }

Report of Special Master.

To the Honorable William D. Lee, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof :

The undersigned, special master, heretofore appointed by the court to take the proofs of the respective parties to the above-entitled suit and return the same to the court with his opinion thereon, begs leave to submit the following

Report.

116 Upon due notice the complainant and the respondent, Geo. W. Harrison, appeared before me in person and by their respective counsel, and the witnesses produced, being first duly sworn, their testimony was reduced to manutype and signed by said witnesses respectively, except Nezario Gonzales (whose testimony it was agreed by counsel for the respective parties shall be taken and considered as though signed by said witness Gonzales); all of which said testimony is hereto attached and made a part of this report.

From said testimony I find the following

Facts.

I.

Jose Leandro Perea, Segundo, deceased, was the son of Jose L. Perea, Sr., deceased, and Guadalupe Perea (afterwards the wife of the defendant, George W. Harrison), also deceased.

II.

Said Jose Leandro Perea, Segundo, died on the 25th day of August, 1887, being then about eight years of age.

III.

The heirs-at-law of said Jose Leandro Perea, Segundo, were his mother, the said Guadalupe Perea de Harrison, and his half-brothers and half-sisters named as codefendants in the bill of complaint in this cause filed.

IV.

On the 23rd day of July, 1884, Guadalupe Perea was duly appointed guardian of said minor, Jose Leandro Perea, Segundo, and as such guardian from time to time thereafter became possessed of certain money and personal property belonging to the estate of said minor, which said property was as stated below :

117

1884.

Dec.	30.	757 head of sheep, worth.....	\$757 00
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1885.

Jan.	27.	Cash.....	\$22 92	
Jan.	27.	"	1,136 65	
Jan.	27.	"	117 51	
			<hr/>	1,277 08
Mar.	6.	"		108 49
Mar.	16.	"		496 71
April	9.	"		10 49
June	10.	"		3,907 73
Dec.	10.	"		4,058 02

1886.

Feb.	22.	"		8 57
June	10.	"		4,208 32
Dec.	11.	"	128 22	
Dec.	11.	"	1,308 12	
Dec.	11.	Sheep, 577, worth....	577 00	
			<hr/>	2,013 34

1887.

Jan.	27.	Cash.....	\$454 17	
Jan.	27.	"	66 86	
Jan.	27.	"	7 14	
			<hr/>	528 17
Feb.	1.	"	160 00	
Feb.	1.	"	144 00	
			<hr/>	304 00
March	10.	"		130 20
Aug.	1.	"		160 00
Dec.	10.	"		4,794 47
Dec.	21.	"		21 42

1888.

Aug.	1.	" for 16 shares bank stock, at \$133.00...	2,128 00
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\$24,912 01

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V.

The credits to which Guadalupe Perea de Harrison, as guardian of said minor, is entitled (allowing \$500.00 per annum for the support and maintenance of said minor, which in the opinion of the master is sufficient to cover all such expenses, as well as the expenses of two trips taken for the benefit of the minor's health—the testimony of Pedro Perea and Mariano Perea being that \$25.00 or \$30.00 per month would be ample to support a child in Bernalillo, and the testimony of G. W. Harrison being that a large part of the expense of the trip to St. Louis was for clothing, which should be included in ordinary expenses, and there being no expense connected with either trip for doctors' bills) are as follows:

Amount allowed for support of minor from July 23, 1884, to Aug. 25, 1887, including medical attendance prior to last sickness, and expenses of two trips, at \$500.00 per annum.....	\$2,000 00
Less amount received from administrators of estate of J. L. Perea, Sr.	500 00
	<hr/>
	\$1,500 00
Doctors' bills and other expenses connected with last sickness and death of minor.....	480 00
Taxes paid for minor.....	691 80
	<hr/>
	\$2,671 80

VI.

George W. Harrison, the defendant, and Guadalupe Perea were married September 2nd, 1885.

VII.

In 1887, after the death of Jose L. Perea, Segundo, Pedro Perea, the complainant herein, and Guadalupe Perea de Harrison, then wife of George W. Harrison, the defendant, both applied for letters of administration upon the estate of said deceased minor, and thereafter such letters were duly granted to both of them by the probate court of Bernalillo county, and each qualified according to law.

VIII.

On October 20th, 1889, Guadalupe Perea de Harrison died, and from the date of her appointment as administratrix of the estate of said deceased minor to the time of her death she refused to account to or co-operate with her co-administrator, Pedro Perea, the complainant in this cause.

IX.

On January 6th, 1890, George W. Harrison, respondent herein, was appointed administrator of the estate of Guadalupe Perea de Harrison, deceased, and from that time to the present has refused, and still refuses, to account to Pedro Perea, the surviving administrator of the estate of Jose L. Perea, Segundo, deceased; but retains

said estate, mingling the funds with his own, having the same deposited to his individual credit in the bank, claiming that Guadalupe Perea de Harrison, his late wife, did not hold said estate by virtue of her appointment as administratrix thereof, but because of her appointment as guardian of said minor.

X.

After her appointment as administratrix of the estate of Jose L. Perea, Segundo, Guadalupe Perea de Harrison acted under the advice of her husband, George W. Harrison, the defendant herein, and said George W. Harrison acted for his wife in the management and control of said estate and in making reports to the probate court of the condition of said estate.

XI.

120 Neither Guadalupe Perea de Harrison nor her husband, George W. Harrison, made any effort, so far as the testimony shows, to loan the funds of said estate, or to procure an order of the probate court for that purpose.

XII.

Some of the funds of said estate, which were in the shape of paying investments, to wit, sheep and bank stock, were withdrawn from such investments and converted to cash, which produced little or no income at all.

I find the law applicable to said facts to be as follows :

I.

The powers of Guadalupe Perea de Harrison, as guardian of Jose L. Perea, Segundo, ceased immediately upon the death of said ward.

II.

After her appointment as administratrix of the estate of Jose L. Perea, Segundo, Guadalupe Perea de Harrison held said estate as such administratrix, and not as guardian of said deceased minor.

III.

Section 1018 of the Compiled Laws of New Mexico, 1884, makes it the duty of a guardian to loan funds of the ward beyond what may be necessary for the support and maintenance of the ward, under the direction of the probate court, and section 1019 makes such guardian liable for interest if he fails to loan the money of his ward, as aforesaid.

IV.

121 After the death of Guadalupe Perea de Harrison, Pedro Perea, the surviving administrator, was the only person entitled to the possession of the estate of said Jose L. Perea, Segundo, and G. W. Harrison by retaining possession of said estate and

refusing to deliver the same over to said administrator became liable for the proper management and control thereof.

V.

The legal rate of interest in New Mexico is six per cent. per annum, and I find that there is due on October 26th, 1892, from G. W. Harrison, the defendant, to Pedro Perea, the complainant, in his capacity of administrator of the estate of Jose L. Perea, Segundo, the amounts shown in the following statement, less the amount thereof which belongs to him as administrator of the estate of Guadalupe Perea de Harrison, the interests in said estate which he has purchased, the amount due Grover William Harrison, and the credits hereinafter stated:

Date received.		Principal.	Interest.	Time.			Amount.
				Year.	Mo.	Day.	
1884.							
Dec. 30.....		\$757 00	\$325 79	7	10	....	\$1,082 79
1885.							
Jan. 27.....	\$22 29						
Jan. 27.....	1,136 65						
Jan. 27.....	117 51						
		1,277 08	593 84	7	9	....	1,870 92
March 6.....		108 49	49 90	7	8	....	158 39
March 16.....		496 71	227 24	7	7	15	723 95
April 9.....		10 49	4 75	7	6	18	15 24
June 10.....		3,907 73	1,711 58	7	3	20	5,619 31
Dec. 10.....		4,058 02	1,655 67	6	9	20	5,713 59
1886.							
Feb. 22.....		8 57	3 43	6	8	....	12 00
June 10.....		4,208 32	1,590 64	6	3	20	5,798 96
Dec. 11.....	128 22						
Dec. 11.....	1,308 12						
Dec. 11.....	577 00						
		2,013 34	700 64	5	9	18	2,713 98
1887.							
Jan. 27.....	128 22						
Jan. 27.....	66 86						
Jan. 27.....	7 14						
		528 17	179 57	5	8	....	707 54
122 Feb. 1.....	160 00						
Feb. 1.....	144 00						
		304 00	103 36	5	8	...	407 36
March 10.....		130 20	43 35	5	6	20	173 55
Aug. 1.....		160 00	49 60	5	2	....	209 60
Dec. 10.....		4,974 47	1,281 80	4	9	20	6,076 27
Dec. 21.....		21 42	6 10	4	9	....	27 52
1888.							
Aug. 1.....		2,128 00	532 00	4	2	....	2,660 00
							\$33,971 17

VI.

Said defendant is entitled to credits as follows, with interest at the rate of six per cent. per annum from the day each item was paid, to wit:

July 23, 1885.....	\$500 00	\$215 50	7	2	6	\$715 50
Nov. 1, 1885.....	205 50	84 25	6	10	....	289 75
July 23, 1886.....	500 00	185 50	6	2	6	685 50
Nov. 1, 1886.....	212 48	76 49	6	....	....	288 97
Aug. 25, 1887.....	980 00	299 73	5	6	....	1,279 73
Nov. 1, 1887.....	273 82	76 66	5	....	....	350 48
						<u>\$3,609 93</u>
Balance after deducting credits						<u>\$30,361 24</u>

VII.

Pedro Perea, as administrator of the estate of Jose L. Perea, Segundo, is entitled to the statutory commission for receiving and paying out the whole of said balance.

VIII.

George W. Harrison is entitled to retain $\frac{1}{26}$ of said balance, less said commission, and should pay over to said Pedro Perea, as such administrator, the commission on said $\frac{1}{26}$, and also $\frac{9}{26}$, as shown by the following statement:

G. W. Harrison, as administrator of the estate of Gaudalupe Perea de Harrison, is entitled to.....	13 26
G. W. Harrison, owner of interest of Filomena P. de Otero.....	26
123 G. W. Harrison, owner of interest of Cessaria P. de Hubbell.....	26
G. W. Harrison, owner of interest of J. M. Perea.....	26
Grover William Harrison.....	26
	<hr/> 17 26

Pedro Perea, as such administrator, should pay out the remaining $\frac{9}{26}$, as follows:

To Jose L. Perea.....	1
To Benicio F. Perea.....	26
To Mariano F. Perea.....	1
To Jacobo Perea.....	26
To Pedro Perea.....	1
To Beatriz Perea de Armijo...	26
To Soledad Perea de Castillo.....	1
To Josefa Perea de Castillo.....	26
To Barbara Perea de Yrisarri.....	1
	26
	<hr/>
	9

The master would respectfully recommend that the court order, adjudge and decree:

I.

That George W. Harrison pay over to Pedro Perea, as administrator of the estate of Jose L. Perea, Segundo, nine twenty-sixths ($\frac{9}{26}$) of said balance of \$30,361.24, and the statutory commissions on the remaining seventeen twenty-sixths ($\frac{17}{26}$).

II.

That Pedro Perea, as such administrator, distribute the nine twenty-sixths of said balance, to be paid to him by said G. W. Harrison, to the heirs of said Jose L. Perea, Segundo, as above set forth, less his statutory commissions for receiving and paying out the same.

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III.

That George W. Harrison pay the costs and expenses of this suit, including a fee of \$5,000.00 to the solicitors for complainant, and a master's fee of \$1,500.00.

Respectfully submitted.

KARL A. SNYDER,
Special Master.

Said testimony attached to master's report being in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo, } ss:

In the District Court.

PEDRO PEREA, Admin'r, &c., }
vs. } No. 2943.
G. W. HARRISON *et al.*

All objections to questions and answers as to relevancy, materiality and competency may be made at the close of the hearing, without specific objection being made to each question. All objections to interrogatories to be considered as waived unless made at the time.

PEDRO PEREA being duly sworn testifies as follows:

Q. State your name.

A. Pedro Perea.

Q. Are you the party complainant in this case, and in what capacity?

A. I suppose in the capacity of administrator of the estate of Jose Leandro Perea, Segundo.

Q. State if you were acquainted with Jose Leandro Perea, Segundo, deceased, in his lifetime.

A. Yes, sir.

Q. When did he die?

A. I do not remember.

125 Q. How old was Jose Leandro Perea at the time of his death?

A. I think eight years. I am not positive.

Q. Do you know in whose hands his estate was during his life?

A. In the hands of Guadalupe Perea de Harrison.

Q. Is she living now?

A. No, she is dead.

Q. About what time did she die?

A. 20th of October, 1889.

Q. When did you become administrator or co-administrator of the estate of Jose Leandro Perea, Segundo?

A. The 6th day of September, 1887.

Q. Do you know what the personal estate of Jose L. Perea, Segundo, consisted of at the time that Guadalupe Perea Harrison was appointed as guardian?

A. Yes. I cannot express the exact amount without figuring, though.

Q. This question contemplates the character, not the quantity. Of what did it consist, Mr. Perea?

A. Of money, sheep, bank stock and indebtedness.

Q. Debts from other people?

A. Yes.

Q. Do you know into whose possession that property went?

A. Yes, in the possession of Mrs. Guadalupe Harrison.

Q. Had this infant child any lands that were productive of any income of any sort, Mr. Perea?

A. Yes.

Q. What were they and where were they?

A. He had farming land in Bernalillo town and some in the town of Algodones, which is all I remember of.

126 Q. Was there any property in old Mexico?

A. Not at the time he died, but before—in the city of Chihuahua and in Santa Fé. That is all, I suppose.

Q. Are you acquainted with these lands?

A. Yes.

Q. All of them?

A. I think so; yes.

Q. Are you acquainted with a reasonable rental value—say from 1883 until 1887 or 1888?

A. Yes.

Q. What was a fair rental value of the lands owned by this infant from the time of the appointment of his guardian until his death, per annum—do you know?

A. I can tell about the properties that were rented, what was given to her each year, if that will answer the question, or I can find out what they gave all together.

Q. State what real property, income-paying real property, owned by this infant, came into the possession of Guadalupe Perea de Harrison, as guardian, how long the same was in her possession, and what was a reasonable value of rents and profits during the period in which it was in her possession and when did she cease to receive

the income from it and who, if you know, has since received the income, if for the benefit of the estate of this infant.

A. The first item I can recollect of is from Chihuahua property in Jan. 27, 1885, she received \$156.68 Mexican money for rents of property that was due in Chihuahua. March 10, 1887, there was due to her \$156.02 in Mexican money for rents in Chihuahua.

Q. What do you mean by "was due to her"?

A. We never paid her the cash for that, because she owed some money, which was admitted by letter I have here from Mr. 127 Harrison—or Dr. Harrison. We did not pay her the actual cash for it.

Q. What was the amount that was due?

A. \$156.02.

Q. Let me understand you. What do you mean by that? You say it was due to her and not paid to her?

A. I have a letter here of his that might explain better than I could what it is.

Complainants offer in evidence letter marked Exhibit "1."

Q. I find in report of Guadalupe Perea Harrison an item under date of January 27th, 1885, "Rents collected from real estate in Chihuahua, \$156.68, worth 75 cents on the dollar, \$117.51," and on credit side of this account, apparently under date of August 28th, 1884, "By amount of money refunded to administrator on account of rents which they claim to have received from Chihuahua property and turned over to her by mistake, \$67.60." Will you explain that transaction, Mr. Perea?

A. In 1886, about the date of the letter, Exhibit "1," we found out we had made a mistake in the divis- of the Mexican money of Chihuahua, and divided some money that belonged to Cessaria and Barbara by mistake, and we wrote that letter to Mrs. Harrison, of which that is the answer. We did not divide any Mexican money at all that year, until the next year—in March 10, 1887. When we did divide it, there were coming to Jose Leandro Perea, Segundo, \$173.60, and to her other child of course the same amount. That would make \$347.20 that was due to her at that date. She had to pay \$492.31 that she owed out of that error, and each of these minors had to pay \$17.58, which made a total of \$528.47. From that we deducted \$347.20 that was due to her and she owed \$181.27 128 instead of we paying her at that date.

Q. From what did that Mexican money arise?

A. From rents of property in Chihuahua. March 6th, 1885, delivered to her \$108.49 for rents of property in Santa Fé.

Q. Have you a receipt for that?

A. I do not remember. I think I have a check. I have a receipt or check. Here is a check for double the amount.

Q. For the purpose of making this clear: Mrs. Harrison had two children at this time and you paid her for the two?

A. Yes. I haven't receipts for all amounts for I did not always claim receipts.

Complainants offer in evidence check marked Exhibit "2."

Q. Whose endorsement is this on the back of the check?

A. Mrs. Guadalupe Perea Harrison. Guadalupe Perea was her name at the time. January 31, 1887, she received \$114.35 for rent of real estate in Santa Fé.

Q. Have you a receipt for that?

A. Yes.

Q. This paper which you present is a check you paid her for that?

A. Yes. Part of the rent, and various other items are included in that.

Q. Whose handwriting is the endorsement on the back?

A. Dr. Harrison's, her husband.

Complainants offer check in evidence marked Exhibit "3."

Q. Was the \$114.35 for Jose L. Perea, Segundo, or two?

129 A. Jose Leandro Perea alone; I do not think I find anything additionally, except what is included in that first receipt, that was given in December 10, 1884—I think it was.

Q. You mean the *the* first receipt given the administrators?

A. Yes. Of the land in Algodones, I think a reasonable rental would be about \$50.00 per year. By a reasonable rental, I think it would be the least rent per year, free.

Q. Free? You mean net?

A. That is, free from all expenses and everything. The land in Bernalillo I think ought to be getting about \$175.00 or \$180.00 per year, free rent—net.

Q. Who is in possession of that land and has been?

A. Mrs. Guadalupe P. Harrison was in possession to the time of her death, and Dr. G. W. Harrison is in possession today.

Q. Has he been in possession in the interim?

A. Yes. Since she died, up to date.

Q. What, if any, efforts have you made to get possession of that land?

A. I have notified her and also notified him to deliver the possession of the property of that minor, and I have never been able to get it.

Q. How was that notice given? Was it given by you in person, or did you give it through an attorney?

A. One was given through my attorney, Mr. N. C. Collier.

Q. Look at the paper shown you and state, if you know, in whose handwriting it is.

A. That is the handwriting of Mr. G. W. Harrison.

Complainants offer in evidence paper marked Exhibit "4."

Defendants admit this letter was written in reply to one received by Mr. Collier.

130 Complainants offer in evidence the original report made by

G. W. Harrison as guardian of Jose Leandro Perea, Segundo, approved July 6, 1886, marked Exhibit "5."

Complainants also offer in evidence the final report filed in the probate clerk's office on the 7th day of November, 1887, and the

final report of the same person in the name of Guadalupe Perea de Harrison, filed in the same office on the 6th day of March, 1888, marked Exhibits "6" and "7."

Complainants offer in evidence the exceptions filed to the said final report in the same office on the 12th day of March, 1888, marked Exhibit "8."

Q. Examine the paper shown you, Mr. Perea, Complainants' Exhibit "7," and state if you know of your own personal knowledge whether or not any money, property or choses in action belonging to Jose Leandro Perea, Segundo, ever came into the possession of Guadalupe Perea de Harrison, which is not embraced in this report, and if yea, give a detailed statement of such property.

A. There is an item of \$1,420.82 in Mexican money which is not in that report. In 1884, 757 sheep were delivered to her, which are not in that report. Stocks and bonds in Texas, Santa Fe & Northern railroad to the amount of \$303.57 are not included in that report—that is counting \$1 in bonds and \$1 in stock for \$1, that is about what it is, \$5,000 in stock and bonds was the amount distributed among 14.

Q. State whether or not that was the market value of that property.

A. I suppose that was about market value at that time. On March 16, 1885, she received \$496.71, and it is not in that report.

March 6, 1885, she received \$108.49 and it is not in that report; Jan. 30th, 1887, she received \$117.79 more than the face of Thornton's indebtedness shows, and that is not in that report.

Q. What do you mean by "more than the face of Thornton's indebtedness shows"?

A. When we made a division of the indebtedness due to the estate of Jose Leandro Perea, we divided the face value of the notes of what the people owed to the estate—that is to say, without adding the interest. After making the division, I collected from W. T. Thornton the full amount of what he owed, and to Jose Leandro Perea, Segundo, there was due \$117.79 by way of accrued interest on that note.

Q. In this report we find the item, "Received from W. T. Thornton, \$336.38."

A. They received \$117.79 more than that; \$7.14 par value of stock in the First National Bank of Santa Fe she received, that is not shown in the report. She sold that so as to make equal shares, so as to give her certificate only for \$1,600, 16 shares. I am not positive of the price we paid her, but I think it was at the rate of \$140.00 per share.

Q. I find in this report an item, Dec. 11, 1886, "Received bank stock in the First National Bank of Santa Fe of the value of \$1,600." What was the reasonable market value of the stock of the First National Bank of Santa Fe on that date, if you know?

A. I think it was about \$140.00 per share if I recollect right.

Q. What knowledge have you of the value of stock in that institution, or had you then?

A. I have been connected with the bank for several years, and was at that time a director and vice-president of the bank. I sold stock several times and bought stock several times and of course I knew the statements of the bank—their assets and liabilities.
 132 Jan. 30, 1887, she got \$114.35 rent of real estate in Santa Fé, which is the same I gave a little while ago, but I am showing now what was not in the report that she received, and that is one of the items. She has at that time here in the report \$66.86, instead of having \$114.35—in other words, what is not reported, \$47.49.

Q. Do you know, Mr. Perea, what Mrs. Harrison did with the sheep which she received as guardian of this infant?

A. Yes, she sold them. She sold part of those sheep to me.

Q. How did you pay for them?

A. I paid for them in notes at the time and afterwards I paid the cash.

Q. Afterwards you paid the notes when they matured?

A. Yes, sir.

Q. Were there any sheep received by Mrs. Harrison which she did not sell?

A. I do not know. I think she sold all.

Q. What rate of interest did those notes which you gave bear?

A. Ten per cent.

Q. Have you those notes?

A. I think one of them. This is a renewal note, one of them was renewed for a year.

Q. This note which you show me is for \$8,717.25, that was for the interest of the two children was it?

A. Yes, sir.

Complainants offer in evidence note marked Exhibit "9."

A. The next item is in March, 1887, the one I referred to a while ago, I don't know that this corroborates the same amount, \$173.60 in Mexican money for rents in Chihuahua. The next item
 133 is April 9, 1885, money received on account of Bernalillo mill, \$10.49. There was dividends of the stock of the First National Bank of Santa Fé from the 1st of Feb., 1888, to date that ought to be accounted for. That is all that I can find now.

Q. Look at the credit on that account. The first item is guardian of said ward credits herself with the following, to wit: "By amount of list of indebtedness turned over as above charged and still uncollected, in the hands of said guardian, \$4,131.88." State if you can, Mr. Perea, what the separate items going to make up the sum total consisted of?

A. Just one-sixth of the amounts I read is what was due Jose L. Perea, Segundo:

Romaldo Baca.....	\$1,566 66
Andres Sena.....	915 24
T. B. Catron.....	10,538 62
Matias Sanchez.....	45 00

Vicente Chaves.....	104 08
Dolores Chaves.....	84 66
Juan Guerin.....	597 96
Jesus M. Gallegos.....	530 63
Bad debts.....	570 66
Debts in store.....	513 36
Manual Baca.....	33 30
Solomon Barth.....	1,233 30
Rumaldo Baca.....	1,900 32
Trinidad L. de Delgado.....	2,066 64
Jesus M. Luna & Bro.....	199 26
Santiago Baca.....	199 93

That makes a total of \$4,131.88, being the one-sixth due Jose Leandro Perea, Segundo.

Q. Explain, Mr. Perea, how Jose L. Perea, Segundo, became entitled to one-sixth of that, and how it was attempted to be divided or set off to him?

134 A. In making our last division we calculated that the widow was entitled to four times as much as any of the heirs. The heirs were fourteen, therefore with her it made eighteen with her four equal shares. Then we delivered to her six shares, four for herself and one for each of her children. Therefore, in that receipt, Jose Leandro Perea, Segundo, gets one-sixth of what she received.

Q. Are you acquainted with the persons named as debtors in that statement which you have given?

A. Yes.

Q. State whether or not any of the persons named were solvent and able to respond to judgments for those sums of money, between the years 1884 and the present time and if so, which of them, and if any of them have become insolvent since the year 1884; state which and when, if you know, they became so.

A. Rumaldo Baca is insolvent. At that time he had a mortgage on his house in Las Vegas which was bought in for the mortgage, and he could not pay anything else.

Q. Who bought it in?

A. Judge Lee bought it in for the administrators. That is there yet. Andres Sena is insolvent personally, but the note was signed by A. Grelahowsky and Lorenzo Lopez, and there is a judgment in court against them today. T. B. Catron is solvent and is perfectly able to pay the amount.

Q. How was that indebtedness of T. B. Catron evidenced?

A. By his notes to Jose L. Perea.

Q. Did they bear interest, and if so, at what rate?

A. Ten per cent. Trinidad L. de Delgado has a mortgage on real estate in Santa Fé for her indebtedness. The others are perhaps not worth a cent, except maybe Jesus M. Gallegos. There is a judgment against him for the amount. The others, I think, are not worth anything.

135 Q. Now, will you explain that transaction, Mr. Perea, how when those debts were divided and various heirs of Jose L. Perea first gave

their receipts to the administrators, what was given to the various heirs to represent this indebtedness? What was given to Mrs. Guadalupe Perea de Harrison, for instance?

A. There was nothing given to them, except that at one time when we had a meeting, I told them all about these various items—by them, I mean the heirs—and asked them to advise what they wanted to do with them. At that time they said it would be better to put them into the hands of some attorney for collection by suit, but there has never been anything done with them. I told them I had the notes or whatever evidence we had ready for the disposal of the heirs—whatever they saw fit to do with them.

Q. Do you know whether or not that Catron's indebtedness has ever been paid?

A. I do not know whether he ever paid Mrs. Harrison anything of her share or not. He has paid several others of the heirs what he owed, some of them part and others the full amount.

Q. The second item of credits in this final report, Exhibit No. "7," "by interest in the Manuel Gonzales vineyard, \$189.55." What does that mean, Mr. Perea?

A. I suppose it means they have that interest in the vineyard yet, but Mr. Harrison sold that to Mariano Perea.

Q. Do you know what he received for that?

A. I am not positive. I think we sold it at the rate of 136 \$1,200.00 for the whole vineyard. That would be the one-eighteenth part of that would be what he received for Jose L. Perea, Segundo, if that was the rate, and I think it was.

Q. The next item of credits is, by amount expended in necessary improvements on real estate of ward, as shown by itemized statement, marked Exhibit "A," and Exhibit "A" you have there before you; state what, if anything, you know about that item.

A. Of course I do not know anything about these items. I know he worked there improving that land because I saw his man working, but I was not supposed to keep track of how much he worked, and I did not keep track.

Q. How much land is there there, Mr. Perea?

A. I think there must be about six acres, but I do not know for certain. I never measured it. It may be a little more or a little less.

Q. What is it reasonably worth now in its improved state?

A. It might be worth about \$800.00.

Q. What was it reasonably worth before this expenditure?

A. I think it was worth about that, because I think land is worth a little less now than it was then.

Q. Do you think it was reasonable, proper or necessary to expend the sum of \$556.00 in improving—according to the items of this Exhibit "A"—a tract of land of six acres, in Bernalillo?

A. I do not think that high rate of improving showed much value, particularly when the land was getting rent without the need of the improvement. It was farming land before that. It was not in alfalfa, but it was always planted in wheat, corn or beans. Some of

137 those items in Exhibit "A" are not right; for instance, for cutting cottonwood trees and stumps, \$25.00. It may have cost that, but the wood they got out of them ought to be worth more than what it cost, because you can get in Bernalillo now, or you could before, a man to cut trees and they would give you half of the wood. And the acequia a charge of \$100.00. I do not think it could have cost that. Acequia and boxes, \$25.00, might be a pretty high price for doing it at the rate of \$1.00 per day, which seems to be the charge. The posts, if there were 500, I suppose \$50.00 would be about right, because posts are worth there about ten cents apiece.

Q. The next item of credits, by amount expended and cost of support and maintenance of ward from April 2, 1883, to August 25, 1887, less \$500.00 paid on this account by administrators, \$2,650.00. State, Mr. Perea, what was the age of this child as near as you can on April 2, 1883, and whether or not, in your opinion, \$3,150.00 would be a reasonable charge for the maintenance of a child of his age and condition from April 2, 1883, to August 25, 1887?

A. The child must have been about four years old in April 2, 1883, or a little less, likely. I am not positive of the age, and he died about eight years old. Of course, I think that rate must be at about the rate of \$750.00 per year. I think that is rather steep for this country; \$750.00 per year I think you can very near support the family

Q. Where was this child kept during this time?

A. At her house in Bernalillo.

Q. Had she other children?

A. She had part of the time that other child, Julian Perea, of my father's.

Q. Had she other members of her family?

138 A. Not that I remember. I do not know whether Mr. Harrison's child was born before this one died or not.

Q. You have children of your own, Mr. Perea?

A. Yes, sir.

Q. How many?

A. One.

Q. Your brothers and sisters have children?

A. Yes, sir.

Q. You have lived in Bernalillo for a good many years and seen these children brought up there, have you?

A. Yes, sir.

Q. What in your opinion would be a reasonable charge per month for the maintenance of a child in the state and condition of this child—and in this connection I will ask whether he was healthy and strong or whether weakly and sick—between the age of four and eight years, kept and cared for as this child was kept and cared for?

A. I think \$25 or \$30 per month could support a child about the way he was kept and cared for, even clothing. He was a healthy looking child as far as I know of him—healthy and stout looking.

Q. The next item of credit here is Jan. and Feb., 1886, by one-

half of expenses in trip to Mexico, account of health of ward, \$500.00. What do you know about that item?

A. I know that Mr. and Mrs. Harrison went to Mexico about that time. I think they brought the child along with them, but I do not think they went on account of the health of the child. I think they must have gone for pleasure.

Q. Do you know how long they were gone?

A. I do not.

Q. Do you know who went? I believe you said Dr. Harrison and his wife and the child?

139 A. Yes. I do not know whether they brought a nurse with them or not.

Q. Do you know whether or not the condition of the child's health was such in Jan. and Feb. 1886 as to necessitate a trip to Mexico?

A. To the best of my knowledge he was healthy and not sick at all.

Q. The next item is Nov. 29th to Dec. 31st, 1886, by one-half of expenses trip to St. Louis for medical treatment of ward, \$450.00.

A. I know they went to St. Louis about that time, but never heard of the child being sick.

Q. The next item of credit, amount of taxes paid for ward in the year 1885, \$205.50?

A. I do not know anything about that.

Q. The next, amount of taxes paid for year 1888, \$212.48?

A. I do not know anything about that, either.

Q. Or the next, by amount of taxes paid for the year 1887, \$206.41?

A. I do not know anything about that, either.

Q. Or the next, by additional taxes paid for ward in the year 1887, \$67.38?

A. I do not know anything about that one, either.

Q. The next item, August 28, 1884, by cash paid for repairs on mill property in Bernalillo, \$40.00. Do you know anything about that item?

A. I know there was some cash paid for repairs on the mill about that time. I am not certain of the amount, but my impression is that \$40.00 very likely covers what he paid for the interest that the two children have, but still I am not positive. I could find it out I suppose, but never thought of it.

Q. The next item, by amount of labor and expense in the work done on Bernalillo property for ward—there seems to be no
140 credit claimed. The next item, by amount of money refunded to administrators on account of rent they claim to have received from Chihuahua property and turned over to her by mistake, \$67.60. Is that the item you have previously spoken of?

A. I think that ought to be stricken off entirely when we charged him only with \$173.60 for the rents collected.

Q. The next item, for funeral expenses, doctor's bills and priest's services. What about them?

A. I suppose those ought to be all right.

Q. You say, Mr. Perea, that you are president of the First National Bank of Santa Fé now?

A. Yes, sir.

Q. Have you been engaged in the banking business and have you had personal knowledge of the ruling rates of interest in New Mexico from 1884 to the present time?

A. Yes, sir.

Q. State, Mr. Perea, at what rate of interest money could be safely invested in Bernalillo county and in the Territory of New Mexico during the period mentioned. I mean with undoubted security, real estate or otherwise?

A. I think there is always call for all the money a man would want to lend at 12 per cent., with gilt-edged security.

The taking of testimony adjourned until the following day, Thursday, April 7, 1892.

(Mr. PEREA continued:)

Q. What was the value of these 500 odd sheep which you say were turned over to Mrs. Perea and are not embraced in this report?

141 A. The value at that time was about \$1.00 per head.

Q. Do you know what was the ordinary rental value of the sheep or what was usually paid for the use of sheep at that time?

A. Two pounds of wool per year for each.

Q. Do you know what that wool was worth, about?

A. Wool has been worth on an average about 15 cents in late years.

Cross-examination:

Q. You say that at the time of the death of Jose Perea, Second, there was some property in old Mexico. State what the property was, personal or real estate, how he acquired his interest, what it was worth and what became of it.

A. It was a house in the city of Chihuahua, or a number of houses, I suppose, and there is an interest in a small grant in the State of Chihuahua. The property was acquired in the collection of a debt by my father a good many years before he died.

Q. The title was vested in your father?

A. Yes.

Q. Was there ever any division of the property between the heirs or was it sold and the proceeds divided?

A. Yes. The property was divided among the heirs in proportion and afterwards in a suit of partition, the property came to me.

Q. Partition of it was made by suit in the district court of Bernalillo county?

A. Yes, sir.

Q. When the division of the property was made under the decree of that case, you received this property in the State of Chihuahua?

142 A. Yes, sir.

Q. Do you remember when that decree was entered?

A. Not for certain. I suppose about 1887.

Q. No rents were paid over to the guardian, Mrs. Perea, after the division of this property? On account of this property in Chihuahua?

A. No.

Q. You also spoke about a piece of property in Santa Fé. What was that? Real estate?

A. It was several houses in Santa Fé and some parts of grants and a little piece of farming land in Santa Fé county.

Q. Was that also divided in that suit?

A. Yes, sir.

Q. To whom did that go?

A. None of it went to Jose L. Perea, Segundo.

Q. Of course, he received no rents? His guardian received none for him after the rendition of that decree?

A. No. After about April, 1887, no rents came to him from real estate. I want to correct that—except very likely from the farming land in Bernalillo and Algodones—from rents from houses, none.

Q. Then you say she received \$156.58 Mexican money on January 27, 1885, for property in Chihuahua. State what proportion of the rent that was—the rent of the whole property?

A. One-twenty-eighth of the whole property.

Q. Was any money paid to her on account of her interest in these rents?

A. No, except for Julian, the other child that died—for her personally, no.

Q. She had no interest in this Chihuahua property at that time?

A. No, she never did.

143 Q. I see letter marked Exhibit "1," January 21, 1886, of G. W. Harrison which seems to be in reply to one of yours to his wife in which he says: "We are willing that all errors should be corrected," etc. "If you paid my wife \$492.31 in Mexican dollars in rents in full that belonged to Cessario and Barbara," etc. "You can deduct from income this year that amount. If income is not sufficient notify me and I will make it good." All that you say she was paid on account of the interests of the two children, Julian and Jose, in Chihuahua property?

A. No; \$492.31 was paid on account of herself, Mrs. Harrison's money that had been paid too much to her and \$35.16 had to be deducted from Jose L. Perea, Segundo, and Julian Perea that had been paid too much to them. As far as I can remember now, this was on account of money that was due to them from rents in Chihuahua before father's death. When we made the original division of the Mexican money that was in Chihuahua, we forgot to deduct the money that was due to Barbara and Cesario, who were then minors.

Q. It was uncollected rents that was due at the time of your father's death?

A. Had been collected by father and had been credited on their accounts and charged to him.

Q. Was he dividing it up every year?

A. Yes. Before his death, he divided every year what was coming to the children; half was supposed to be his and half to the children.

Q. On account of your mother?

A. Yes.

Q. Then this total amount was not all on account of rents?

144 A. We owed Cesario and Barbara. It ought to have been paid to them before dividing the money. The original division was something like several thousand dollars, we gave the widow. I see one item of receipt here \$7,000.00 and there was her first receipt besides. I think she must have got something like \$15,000.00 or \$20,000.00 in Mexican money in her own right.

Q. Then if there had been a payment of \$156.02, or as much as that when previous payments were made, and you say this \$156.02 was not paid, is it necessary to charge her with \$156.02 that she did not receive? I refer, of course, to the payment of March 10th, 1887.

A. I think you are mistaken. The amount of \$156.02 is in '85. We deducted \$17.58, which had to be paid on his share to Cesario and Barbara, which left \$156.02, and that was due to him. We never paid it on account of that letter of Mr. Harrison's, and instead of our paying, Mr. Harrison owes me today on account of that, \$181.27, on account of that \$492.31.

Q. If Mrs. Harrison as guardian never received that money, is she to be charged with it?

A. I suppose she ought to be, because she received extra money before and by her letter, unless she was not responsible for Mr. Harrison's actions. He was acting for her, and we supposed all the time that she was responsible for his actions.

Q. Was she charged with the money she received before?

A. Yes, certainly, I will explain this. She was charged for the minor with \$17.58 more than was due to her before—she received that much more. Therefore in March, 1887, we claimed from her \$17.58 from that child, and then instead of charging her \$173.60, we only charged \$156.02. We took that \$17.58 from what
145 we had to pay at that time.

Q. I understand you to say that the \$156.02 have not been paid. That is what I understand.

A. They have not been paid in a check. I claim on that letter they have been paid, because I got that letter from her giving the authority to deduct that money that is coming to her so as to pay the \$492.31.

Q. But that letter is conditional, is it not?

A. If there was an error, yes.

Q. Then there had been no other adjustment?

A. That is all, except figuring we made afterwards when we paid the other heirs what was due to them.

Q. All that has ever been done by either her or Dr. Harrison with

reference to admitting and accepting that charge mentioned in that letter, Exhibit "1," was the mere writing of the letter and receiving it by you?

A. I will not say it was all, exactly. On March 10th, 1887, we called all the heirs together to divide that Mexican money, as we always did it to divide money; we never did it without calling them all together—never of our own accord. Whether Mr. Harrison or Mrs. Harrison were there at that time I cannot recollect. That is the time we settled this amount, all the heirs together, that is all those who felt like appearing. That time we gave checks to the others for what was due, and Mr. Harrison we made account he was owing \$181.27.

Q. You made out a statement?

A. We made it out there in the office. We did not send him a statement. The probability is that he was present, but I cannot say he was as I cannot remember, but I will say they were all called together to make a settlement. I will state further that they were always called together to make a settlement. There was only
146 one time I can remember that they were not called. The last time I sent money, some 2,800 odd dollars of Thornton's and rents, that division I made while I was in Santa Fé during the legislature, and I just sent the check and told him what it was. That was the only time I made any settlement without calling them all.

Q. As I understand you, this \$156.02 should be charged against Mrs. Harrison as guardian because there was a previous liability on her part for overpayment, and she settled that overpayment by your retention of the \$156.02, or to that extent?

A. Yes.

Q. And the money was never actually paid, but that letter and the subsequent payments is the way that comes about?

A. I think it was actually paid, \$400.00 too much to her several days before and she agreed to it. That is the only way it was paid.

Q. And you say that \$400.00 odd mentioned in the letter, Exhibit "1," was payment on account of both these minors?

A. You mean the \$492.00 was returned by them on account of her?

Q. Yes. Was that \$492.00 overpayment on account of money coming to the minors or money coming to Mrs. Harrison?

A. Money paid to her too much on account of her own interest.

Q. On March 6th, 1885, you say, delivered to her \$108.49 for rents for property in Santa Fé. Do you know whether or not that is shown by the statement of accounts as filed by her, Exhibit "7"?

A. I cannot find it here.

Q. What proportion was that \$108.49 of the total amount of rent divided at that time?

A. One-twenty-eighth.

147 Q. You say under date of January 31st, 1887, she received \$114.35 for rent of real estate in Santa Fé that you have receipt for?

A. I have no more receipt than this check, Exhibit "3."

Q. Of what is that check made up, as well as you can state, Mr Perea?

A. It was made up of the Thornton payment.

Q. Do you know the amount?

A. I have here the exact amount—\$2,725.02 was all of it, and the amount of rents was \$228.70 and it was deducted from that \$94.97 for the patent of Tejon grant, that made the amount of \$2,858.75.

Q. How much belonged to the child?

A. One hundred and fourteen dollars and thirty-five cents for rent.

Q. To Jose L. Perea, Segundo?

A. Jose Leandro Perea, and \$454.17 on account of Thornton.

Q. I see under date of January 30, 1887, a charge here, rents from real estate in Santa Fé, \$66.86. Is that part of the same rent?

A. I think it is.

Q. Do you know any reason why it should be there \$66.86 instead of \$114.35 as claimed by you?

A. I have here \$47.49, the difference between their \$66.00 and the \$114.00. I cannot, of course, explain how he put that \$66.86 there, because when I sent him that check I sent a letter explaining the whole transaction. He evidently deducted one-half of what was paid for the Tijon patent from that child. Of course, looking over it now, I see there is to be some deduction, but not one-half, but one-twenty-eighth of the \$94.97, because half of that Tijon grant was to her personally at the time she was married, if I am
148 not mistaken, and of the other half, one-fourteenth comes to the child.

Q. To whom did the interest of this Tijon grant go at the time of the division?

A. That was sold by all of us, I think, to Mariano Otero. I suppose he sold it, too. At the time we made the division on the 6th of April, 1887.

Q. You say that you think that the reasonable rental of land in Algodones would be \$50.00 per year. Did you ever know it to rent for that much?

A. Land is generally given to men on halves or thirds. I think that is the way he has it today. They give you half of their whole crops and you furnish the seed and teams, or else you give the land and they give one-third of the whole crops without any expense, and I think one-third of the crop of that land ought to be worth about \$50.00. That is the reason I say a reasonable rent would be \$50.00.

Q. Do you know that one-third of the crop has ever been sold for \$50.00—\$50.00 realized from it by renting it in that way?

A. I certainly never knew what crops he got from it. I have never seen what that land gave alone, because before it was divided it was all the land together. I never knew what one of the lands alone would give, but that is about what all of these give.

Q. How many acres in the Algodones piece?

A. I think it was calculated at the time of the division that it ought to be about 16 acres in all those pieces.

Q. How many acres in cultivation?

A. I mean in cultivation, but I do not know for certain.

Q. This piece of land belonged to the two children?

A. Yes.

149 Q. Do you know whether it was cultivated at all?

A. I think it is. I have heard it is. I haven't been there myself.

Q. You do not know what kind of crops they planted on this land?

A. I say I have never been over the land to see what they are planting on it. I think it is all the time cultivated, and I suppose it is corn and wheat.

Q. You say the land in Bernalillo ought to be worth about \$175.00 or \$180.00 per year net?

A. Yes.

Q. How many acres of tillable land are there in that tract?

A. I suppose it was about six acres.

Q. What was it planted with?

A. Alfalfa.

Q. That alfalfa was put there by Mrs. Harrison wasn't it, while she was guardian? It was not planted in alfalfa when she received it?

A. Yes.

Q. What would it be worth if planted in corn and wheat, the six acres?

A. I suppose it would be worth about \$50.00.

Q. By planting it in alfalfa it has increased in value to about \$175.00 or \$180.00?

A. I think so.

Q. Do you know what year it was planted in alfalfa the first time?

A. I do not know for certain. I think '86.

Q. You say Mr. Perea, that \$1,420.82, Mexican money, was delivered to Mrs. Harrison in 1887 which is not charged in the final report by her. How do you know she received that money, and on what account was it received?

150 A. I do not think I said in 1887. If I did it was a mistake; it was 1885. I know it was received because she gave a receipt for it.

Q. Do you know where the receipt is?

A. I think it is in Santa Fé. It is recorded in Book E, Wills and Testaments, and the original is in Santa Fé. It was on account of moneys that father had in Chihuahua and also on account of rents.

Q. Was that the share of Jose L. Perea, 2nd, in that money?

A. Yes, \$1,420.82. It is evidently a mistake of record making it \$1,420.00, because in the other it is \$1,420.82.

Q. Who paid the money over, Mr. Perea?

A. Mariano Perea.

Q. Paid in cash, Mr. Perea, at that time?

A. I think it was paid in a check on the Bank of Mexicano at Chihuahua.

Q. Then there was an actual payment, as I understand you, of so much Mexican money at that time?

A. Yes, sir. An actual payment of the Mexican money.

Q. Do you know what it was worth in American money?

A. I cannot remember for certain. I think about 80 cents on the dollar at that time.

Q. Is there any way to find out what it was worth?

A. I suppose by writing to Chihuahua, or very likely the Bank of Santa Fé, because I think we exchange several checks through the bank. The bank would send to San Francisco or Philadelphia, whichever was the best market.

Q. If it was paid by check on the bank at Chihuahua, the bank would send there for collection and American exchange be purchased and returned, wouldn't it?

151 A. Yes, I have done different ways. Write to Chihuahua and they will give you American exchange, draft on San Francisco or New York. If we find we can make the more money, send to Chihuahua and let them express to San Francisco.

Q. If you had a check on the bank at Chihuahua, you would send the check there for collection and ask them to express you Mexican money for it?

A. After you find out how the market is and see which is best. I have done both ways.

Q. You collected some yourself?

A. I collected from First National Bank of Santa Fé and had sent direct to San Francisco.

Q. You collected some the same date yourself, didn't you?

A. No, sir, not on that date. I know I did not collect anything at that time, because we had to make this payment. I think Reynolds could tell us more likely than anybody else, because they exchange a good deal at El Paso.

Q. On October, 1884, you say 757 sheep received by her from the administrators, \$757.00. How do you know about that, Mr. Perea? Is that in that same hijuela?

A. No, it is not in that. It is included in that \$2,071.71 she received in her first report, Exhibit "5." In her report she says she received \$2,071.71 in sheep and money. In that report was included 1,575 sheep and \$496.71 in money. That makes up the \$2,071.00. The 1,575 sheep include 818 that was included in her first receipt and 757 I think which she received afterwards. That is what makes that second report.

Q. She has charged herself then with those sheep in the first and second reports?

152 A. She has not charged herself in that last report. That is the only one I say she has not charged it. Afterwards in the last report she did not charge herself. In the first one she did.

Q. Were not those sheep included in the sheep which you bought from her, for which you gave the notes?

A. Eight hundred and eighteen were included in that. Of these

1,575 sheep in the second report, 818 were included in the first receipt we got from her that we bought from her, and the other 757 were delivered sheep.

Q. The 757 were actually delivered to her?

A. Yes, sir.

Q. The other sheep you purchased from her and gave notes for?

A. Yes.

Q. Instead of taking the sheep she took the notes?

A. Yes.

Q. At a valuation of how much per head?

A. One dollar.

Q. Did you ever turn any other sheep over in kind except the 757?

A. I think we did; I cannot tell for certain; 577 sheep were turned over afterwards to her.

Q. I see here in this report, January 27th, \$140.00 was for sheep.

A. That \$140.00 is, I suppose, part of these 757. There were no others but those 577 and 757.

Q. But the 577 were additional sheep?

A. Yes, sir.

Q. The whole of these 757 you say were sheep from the share of Jose L. Perea, 2nd?

A. Yes.

Q. You say that \$303.95 in stock and bonds of the Texas, 153 Santa Fe & Northern R. R. Co. were turned over when? The date you fixed was October, 1884. Is that correct?

A. I suppose that is the date.

Q. Were they worth anything at that time?

A. I do not know either they were or not. I think they were considered worth something at that time, but are not now.

Q. Were the certificates of the stocks and bonds actually delivered or were they retained by the administrators of the estate of Jose L. Perea?

A. I am positive they were in the First National Bank of Santa Fe. The stocks and bonds were left there by her consent as well as the consent of the others.

Q. There wasn't any division except on paper? That was the way they divided, on paper?

A. Yes, sir.

Q. She never actually had possession of a single stock certificate or a single bond?

A. No.

Q. Whatever became of the stocks and bonds?

A. I have been trying to find out myself for several years. They were turned over to Seligman and Preston.

Q. Have they ever been worth anything from '84 until now?

A. No.

Q. March 16th, 1885, to money received by her from the administrators, \$496.71. What do you know about that?

A. That is included in that item of \$2,071.71 of the first report.

Q. The next item, March 6th, 1885, to money received by her from administrators, \$108.47. What was that received for?

154 A. I think that is for rents.

Q. In Santa Fé? That is one item I have asked about?

A. Yes, that is for rents; I will explain about that. That is not included in the reports of the administrators because we were always managing that rather as agents than administrators.

Q. The next item I notice is \$117.79, balance of indebtedness received from W. T. Thornton. When was that paid and how?

A. That was paid by that check of January 31st, 1887, by my check \$2,878.75, Exhibit "3," my own personal check.

Q. How much was the total amount of the Thornton indebtedness?

A. The whole amount collected from Thornton, \$8,175.15.

Q. You say \$2,118.28 actually collected and turned over to her?

A. No. That was the amount for which she gave her receipt as due her from Thornton indebtedness, but the amount actually delivered to her was \$2,725.02.

Q. That is the interest accrued to that?

A. Yes. Interest for several years.

Q. Who collected that from Thornton?

A. I did.

Q. I suppose the total indebtedness was a note?

A. Yes.

Q. You held the note and Mr. Thornton paid you the money and you turned it over to her?

A. Yes.

Q. And part is included in that check for \$2,800.00?

A. Yes.

155 Q. Turned over, then, on the date of that check, Exhibit "3"?

A. Yes.

Q. Is the whole of the Thornton indebtedness included in that check, or only a portion of it?

A. It is the whole of her interest in the Thornton indebtedness.

Q. I see in the report here she shows item of indebtedness January 30, 1887, cash received from W. T. Thornton, on account of being turned over by administrator, \$336.38. Do you know how that is arrived at?

A. I suppose that is arrived at by the actual amount of the face of our report—our report as administrators. We only put that amount, because that was the face of the note. That was the way our books shows Thornton owed.

Q. That was the share of Jose L. Perea, Second, in the face of the Thornton indebtedness?

A. Yes.

Q. You say the total indebtedness is \$2,000.00. You do not mean that Jose, Second got that, but all three?

A. Yes.

Q. The next item, \$7.14, on account of bank stock, First National Bank of Santa Fé. As I understand you, you explained that there

was a difference of \$7.14 in the division of the stock. Was the stock actually divided and certificates issued?

A. One thousand six hundred and seven dollars and fourteen cents was what came to Jose L. Perea, Segundo; \$3,200.00 that was Jose L. Perea, Segundo, and Julian Perea, and we gave her the cash for the \$7.14, because so as not to issue fractions of stock. I do not remember the exact rate, but I think at the rate of \$1.40 on the dollar.

156 Q. Have you any receipt or anything for that \$7.14; anything to show it was paid?

A. Yes. That is included in that receipt of Mariano Otero.

Q. How many shares of stock were in the First National bank to begin with, which you had to divide up?

A. I think it was 450 shares.

Q. And as I understand you, when you came to divide the 450 shares among the heirs there would have been fractions of shares if you had not done this?

A. Yes.

Q. On account of the division of the 450 shares?

A. Yes.

Q. I see there were several items in cash in the last report of Mrs. Perea, cash received on account of dividends on stock First National bank. How do you know the \$7.14 is not included in some of these items?

A. Because that is the dividend of the stock—the dividend the bank declared on the stock she held.

Q. You know the dividend amounted to \$1,308.12 as charged in the report?

A. Yes.

Q. December 11th, 1886?

A. Yes. That is money we gave for the check, for that was accrued dividend that was there for several years on the bank stock.

Q. January 30, 1887, to remainder of Santa Fé rents, \$47.49. How was that paid, Mr. Perea?

A. It is in that check for \$2,858.75. It is included in that check. The rents at that time were \$114.35 and she charges herself with only \$66.86 and that deducted from \$114.35 leaves that \$47.49.

Q. You say bank stock was worth \$1.40 on the dollar. Do you know whether that stock was sold or not?

A. I think it was.

Q. Do you know what it sold for?

A. I heard 133. I do not know.

Q. Ten dollars and forty-nine cents on account of the Bernalillo mill. Explain that item.

A. When they were grinding wheat at the Bernalillo mill that year there was a dividend declared.

Q. Any evidence of the payment of it?

A. Yes. On April 9, 1885, a check was sent to her by Perea Bros. for \$20.98, that was on account of the mill for Julian and Jose. Perea Bros. were managing the mill for us these few months.

Q. Who signed the check—in whose handwriting?

A. Benecio Perea's for Perea Bros.

Q. Who were the administrators of the estate of Jose L. Perea, father of Jose Leandro Perea, Segundo?

A. Jesus M. Perea, Mariano Perea and Pedro Perea.

Q. In the account of the division of that indebtedness, to amount of Baca's indebtedness \$1,566.00. How is that evidenced?

A. There were notes secured by mortgage.

Q. Who held the notes?

A. I did.

Q. Have you ever foreclosed the mortgage?

A. Yes.

Q. And bought the property in?

A. Yes; at public sale.

Q. Has any of it ever been turned over to Mrs. Harrison?

A. There has been no proceeds thus far of the property.

Q. Simply purchased to secure the debt?

158 A. Yes. The deed is in the name of W. D. Lee, trustee, today, and he deeded it in my name.

Q. When was that mortgage foreclosed, if you know, Mr. Perea?

A. It was either the latter part of '86 or the early part of '87. In April 6, 1887, when we divided the rent of the real estate, I already had the deed of Judge Lee in my name and we talked among ourselves there—Mr. Harrison was present—what we should do with it, and there seemed to be some difference of opinion how it should be held and therefore I have never even recorded that deed. It is in my name.

Q. All this indebtedness was undivided? The interest conveyed to Jose L. Perea was undivided interest?

A. Yes, undivided interest.

Q. And the evidences of the debt were retained by the administrators?

A. By myself, personally.

Q. Have you collected any other of these debts except Thornton's?

A. That is all, and that foreclosure of that mortgage of Rinaldo Baca.

Q. Have you endeavored to collect any other?

A. I testified yesterday that I got a mortgage from Mrs. Delgado for her indebtedness.

Q. Does that cover all of it, the interest set apart, the interest of Jose L. Perea?

A. It covers the whole indebtedness, his interest as well as mine.

Q. In whose name is the indebtedness?

A. I think Mariano, myself, and very likely Jesus. I cannot remember now.

Q. Is the property worth the amount of the mortgage?

A. I think not.

159 Solicitors for complainants state that it is not expected at the hearing, to charge the guardian with any portion of the item \$4,131.88 for which she takes credit in her final report, unless

it shall appear in the evidence that the Catron indebtedness, included in that, or some portion of that indebtedness, has been paid to her or to her representatives.

Q. Do you know the handwriting here, Mr. Perea?

A. I do not know without comparing.

Q. Do you know whether Mariano Perea made any statement and furnished to Mrs. Harrison at the time of the first division when the notes were given?

A. I suppose he did. Yes.

Q. You say you cannot recognize that statement as to the handwriting, whether it is his handwriting or not?

A. I think the inside is not his handwriting. The outside may be, but I do not know for certain. I think it is his handwriting, but cannot be certain.

Q. State, Mr. Perea, whether any other items went in to make up the amount of the notes which you gave other than sheep. Was there any cash or personal property of any kind?

A. There was sheep, cattle, horses, cash, goods from the store, a mule, half of one wagon, corn, wheat, flour, a hog, stock in the First National Bank of Albuquerque.

Q. That statement you have there shows \$1,420.82 in cash in Mexican money being the first item in your objections.

A. That was not included in the notes and I can show by figuring—the amount the note was for was \$15,029.80.

Q. I am assuming now that this is a statement made by
160 Mariano Perea, \$1,420.82, money in Chihuahua, and total amount, how much?

A. I suppose that is the amount. I have to figure to see if it was.

Q. Then figure to see if that \$1,420.00 was not added to make that sum.

A. I have no doubt the \$1,420.82 was included in that settlement; I know this fact so far as that is concerned without figuring, but I also know it was not included in the note, because the note was for \$15,029.79½ or 80 cents, and this \$1,420.00 was additional. She said she preferred the money because she could do better than the 75 cents. That is the reason we gave her the money in Chihuahua.

Q. Your are giving your personal recollection about the matter?

A. Yes, without figuring.

Q. What was the date of the settlement when you gave the notes to Mrs. Harrison?

A. It was, I think, December 10th, 1885. It was December 10th, 1884.

Q. That was when the first note was given?

A. Yes.

Q. What were the total amounts of the first notes and when did they fall due?

A. I suppose the total amount of the four notes was \$30,059.60. The first note was due June 10th, 1885.

Q. What was the amount?

A. It amounted to \$7,514.90 and interest.

Q. You stated yesterday that you thought the interest on the first notes was 10 per cent. Do you remember that it was 8?

A. I know it was 10.

Q. You are positive it was 10?

A. Yes.

Q. Have you the original notes anywhere?

161 A. No, I had a memorandum of them but cannot find it.

Q. The first note was paid at maturity?

A. Yes.

Q. When you paid it, you paid the principal with interest added, how did you pay it?

A. By check I suppose. I don't remember.

Q. When did the next note fall due?

A. December 10th, 1885.

Q. How much was that for?

A. The same amount, \$7,514.90.

Q. When did the next note fall due?

A. June 10th, 1886.

Q. What was the amount of that?

A. Same amount.

Q. When did the fourth fall due?

A. December 10th, 1886.

Q. For the same amount?

A. Yes.

Q. That one was renewed?

A. Yes.

Q. This note you produced yesterday, Exhibit "9," that was the original note?

A. Yes.

Q. If this was a memorandum made by Mariano Perea at the time of this settlement and it adds up, including the \$1,422.80 in Mexican money, the amount shown then in pencil, was or was not that \$1,422.00 included in the notes after the discount on them, whatever it was?

A. If it is Mariano Perea's memorandum, then certainly it is not complete because that would never make the amount of the notes. It would make more than the notes.

Q. What does it total?

162 A. Fifteen thousand five hundred and sixty-six dollars and sixty-one and one-half cents is the share of one minor, and double that would be \$31,133.23.

Q. Allowing for the discount of Mexican money, \$2,840.00, 25 per cent., what would be the total?

A. Thirty thousand four hundred and twenty-one dollars and eighty-two cents.

Q. State exactly if you can, what items went in to make up the amount of those notes and prices valued at?

A.—

First, cash.....	\$8,495 45
Then bearing ewes, 4,158 at \$1.....	4,158 00
Grown wethers, 243 at \$1.....	243 00
Bearing wethers, 423 at 75c.....	316 00
2 beeves at \$10.....	20 00
9 horses at \$15.....	135 00
Goods in store.....	452 35
1 mule.....	100 00
$\frac{1}{2}$ of one wagon.....	37 50
20 barrels corn.....	20 00
10 fanegas of wheat.....	20 00
Bad flour, 1,085 lbs.....	16 27 $\frac{1}{2}$
Good flour, 164 lbs.....	4 92
3 sacks shorts.....	3 50
1 hog.....	10 00
Stock in First National Bank of Albuquerque.....	178 55
Ewes.....	818 00

That makes \$15,029.79 $\frac{1}{2}$.

Q. Twice that would be \$30,059.59?

A. Yes.

Q. The amount of each note was?

A. Seven thousand five hundred and fourteen dollars and
 163 ninety cents. The interest on these notes was eight per cent.
 and that renewal note was for the amount of \$7,514.87 and
 sixteen per cent. interest added for two years made \$8,717.25.

Q. By figuring the original principal, you ascertain that the orig-
 inal notes were for eight per cent.?

A. I could not recollect for certain and I figured it up.

Q. You say you don't remember for certain how this \$1,428.82
 was paid?

A. I do remember. It was given check to Mariano and Mariano
 delivered the check to her.

Q. Check drawn by you?

A. By us, yes.

Q. On the bank in Chihuahua?

A. Yes, the Bank of Mexicano.

Q. Check ever returned to you?

A. No, they never returned the checks.

Q. What was the date of the check?

A. January 27, 1885, for \$2,841.64.

Q. She had been paid no money on account of the minors up to
 that date, had she?

A. Up to the 10th of December, 1884.

Q. Up to the time of giving this check in January?

A. I think she might have been paid some sheep before then, but
 no money except \$1,000.00 for the minors, that is not included in
 here at all, that she was paid before.

Q. Look at letter dated January 30, 1887. Does that refer to the
 remittance from Santa Fé in which you say there is a difference of

some \$47.00 in the rent, which should be charged against Mrs. Harrison as guardian?

A. It relates to that.

Q. Does that show that the credit of \$66.86 was not enough?

164 A. It depends on how you understand the letter. I told her I deducted \$94.97; the exact words were: I deducted \$94.97 I paid for you for Tijon and I believe I paid them some more but will find out and will show if I find it. I do not say there I paid it for the children. I paid it for her. I told her in the same letter I can explain to her husband how the account is.

Q. Deduct \$94.97 from the \$228.70, which is the total amount of rent, left \$133.13 to be divided between the two minors, which would be correct if the deduction of \$94.97 was right?

A. Yes.

Q. The interest in Manuel Gonzales' vineyard, I see you testified in your direct examination that it was sold at the rate of \$1,200.00 for the entire vineyard. How much would the interest of the minor in it be worth?

A. He had one-eighteenth, amounting to \$66.66 $\frac{2}{3}$.

Q. You say she has charged herself with \$189.55 for the amount as per statement of the administrators of Jose L. Perea, deceased. That was more than his interest was worth?

A. Yes, but she credits herself with the same amount.

Q. Was his interest ever conveyed to him in the vineyard?

A. I cannot remember exactly how the deed was made by Manuel Gonzales, whether made directly to me or how. I cannot tell.

Q. How did the title stand at the time of your father's death?

A. At the time of my father's death, to Manuel Gonzales' wife.

Q. How did the estate come to have that interest?

165 A. Could not get him to pay anything else and we made a settlement. He should pay that in settlement of indebtedness.

Q. Took that in payment of debts?

A. Yes.

Q. Was the title conveyed to the administrators?

A. I cannot remember whether to the administrators or how it was.

Q. Do you know whether any deed was made of any undivided interest in it to the minor?

A. I do not remember how the deed was made, whether it was made directly to Mariano after we made the settlement. I cannot remember that at all.

Q. You say you do not think it was reasonable to spend \$500.00 improving six acres of land, but you do not know whether that amount of money was actually spent or not?

A. I do not know whether it was spent or not; I hardly think he had a right to spend it without asking an order of the probate court.

Q. Was the land level?

A. It was not quite as level as it is now but was level enough for farming and irrigation.

Q. But it had some cottonwood trees and stumps?

A. Yes.

Q. You say the cottonwood trees could have been cut for half the wood for the trees?

A. Yes.

Q. How about the stumps?

A. Just about the same, I suppose.

Q. Would anybody remove stumps for half the wood?

A. If it was stump alone, but if with the tree, yes.

Q. Is it not a fact that they merely cut a tree that way without removing the stumps?

A. No, I think it was to remove everything; there is no
166 expense in cutting the trees; the actual expense is in removing the stumps.

Q. How long an acequia was made, do you know?

A. I suppose it may be 400 or 500 yards. I do not know the exact length.

Q. How much do you think would be sufficient to pay for that?

A. I think \$25.00.

Q. How big a ditch is it?

A. It may be about three feet wide.

Q. In regard to the amount claimed on this report to have been spent for the support of a minor child, do you know whether they had the services of a physician for that child any time during the four years and over preceding his death?

A. They may have called a physician once in a while. I do not know. They called one of course when he died—two as I see in the bill.

Q. Do you know whether or not they were advised to take the child to old Mexico?

A. No, I do not think so, unless Dr. Harrison advised it.

Q. Outside of him?

A. I do not know.

Q. Do you know whether the child was treated by any other physician besides Dr. Harrison from St. Louis?

A. I do not know.

Q. You say you think the \$40 expended on the mill was for both minors' interests in it. Do you know that, or is that a supposition?

A. No; I do not know; that is my impression; I do not know for certain; my impression is that the most that was spent there was about \$500.00, and even that would not be \$40.00 for each one
of them. At the rate of \$520.00 expense for the mill, they
167 would have to pay \$20.00 each, and that was as much as was spent on the mill.

Q. Look at this bill; in whose handwriting is it, do you know?

A. I do not.

Q. It purports to be a voucher from Perea Bros. for \$40.00 expended on the mill on account of Jose L. Perea, 2nd.

A. Yes, that is what it is; it is a receipt from Mrs. Perea for \$40.00 on account of her son Jose L. Perea, signed Perea Bros, but I do not know the signature.

Q. You say that the ruling rate of interest since 1885 and '6 has been 12 per cent. on gilt-edged security. That has been the bank rate?

A. Yes.

Q. But you do not know of the investment of funds by guardians, permanent investments at 12 per cent.?

A. I do not know what guardians may do, but anybody can invest all they want to for that.

Q. Don't you know that a good deal of money has been invested in New Mexico for less than that?

A. I have not been able to find any myself for less than that.

Q. On real-estate security?

A. I know very little, unless strangers may send money here to invest at a lower rate, but not residents here.

Q. Your own notes were bearing interest at less than 12 per cent. were they not?

A. Yes.

Q. You say the average price of wool has been 15 cents per pound. That is no attempt on your part to fix an accurate average of six years; you trust to memory don't you?

168 A. That is about the lowest price I have sold my wool for the last three years at least, if not more. I have sold sometimes for 18 or 19, but that is the lowest price.

Q. Prior to that time, '85, '6 and '7, wasn't wool down to 10 or 11 cents?

A. In '83 I think it was down to ten.

Q. '84, '5 and '6, how was it?

A. In '84 I think it was about 12, and from '86 to date it has averaged 15 cents.

Q. How many sheep did Mrs. Harrison receive on account of this minor, Jose L., 2nd, for which a rental of 2 pounds of wool per year could be had?

A. You mean the sheep she actually received outside of these that might be included in those notes?

Q. Yes.

A. She received in October, 1884, 757 sheep; she received in '85 577 sheep. I think that is all the sheep she received.

Q. That number on account of this minor child?

A. Yes, on account of Jose L. Perea, Segundo.

Q. Do you know if she sold these sheep?

A. I do not.

Q. I understand you to say you thought she sold them?

A. I thought she sold them because I know of her having sold sheep; she sold sheep to Jacobo Yrisarri in '87 or '88, I am not positive about the time; she sold him 8,000 head of sheep.

Q. The keeping of the sheep would be attended with considerable risk would it not, in the way of loss—a hazardous business, is it not?

A. Yes, taking care of them; it is risky, but very profitable at the same time.

Q. There might sometimes half of them be lost in a single season?

169 A. Sometimes, yes, but when you take care of them you get 100 per cent. profit in one season, if you have a good season.

Q. The letting of them out on shares is also more or less hazardous, isn't it?

A. It depends on the parties that you let them out to. If they are good parties it is no more risky than lending money.

Q. I mean, taking the average class of people who take them on shares.

A. If you get responsible people to take them on shares—unless you have so many of them—if you have a few it is easy to find responsible people to take them, even giving mortgage as security.

Q. Mortgage on real estate?

A. Yes, or secured by good, responsible parties signing.

Q. On January 27th, 1885, or in December previous, was there any Mexican money paid to Mrs. Harrison on her own account?

A. January 27th, 1885, we gave her a check for \$313.36; that check was for rents due to Jose and Julian for the year, 1884.

Q. On the same bank—that Mexican bank?

A. Yes, that is all I find to her at that date.

Q. Then the check for \$2,841.64 of that date was for Mexican money coming to the two minors?

A. Yes.

Q. None to her?

A. No, none to her.

Q. Did you make any payments to her on her own account at that same time of any kind of money?

A. No Mexican money at that time I know. (Witness refers to receipt of Guadalupe Perea on page 603, Book B.) That is
170 money we gave to her on the 27th of January, 1885, apparently. I think that was money that was in the safe, \$189.15, \$428.00 on her own account and \$30.57 on account of Jose L. Perea, Segundo, and the same on account of Julian Perea.

Redirect examination:

Q. Mr. Perea, was stock in the First National Bank of Santa Fé considered to be a safe investment the last six years?

A. Yes.

Q. Do you know of the existence of any necessity for the sale of the stock in the First National Bank of Santa Fé that belonged to this infant?

A. I do not, except very likely they did not like to own stock there, but it is a safe investment as I suppose there is in New Mexico of any bank stock or money, and it always gave a fair dividend. The lowest semi-annual dividend it has been giving in late years is 6 per cent., and it goes as high as ten.

Q. Do you know whether or not the bank was paying dividends at the time when you understand this stock was sold?

A. Yes, if my recollection serves me right, about the time they sold it there was an eight per cent. dividend declared, a semi-annual dividend.

Q. What is stock worth in that bank today, do you know?

A. Right after dividend is declared, I suppose it is actually worth about 125.

Q. I mean what is the market value?

A. There is so very little market for it you cannot tell. There isn't much sold or bought.

Q. What is the lowest price at which you have known any stock of that bank to be sold since 1884?

A. One hundred and twenty-five dollars is the lowest I have known it to be sold.

171 Q. That was on call, wasn't it?

A. No. Certificate of deposit, six months.

Q. In what bank was that?

A. First National Bank of Santa Fé.

Q. How much stock did she hold in the First National Bank of Santa Fé at that time, do you know?

Q. What is the highest price stock has brought during that period?

A. I think about \$140.00.

Q. When this stock was sold at \$125.00, were the dividends added or deducted?

A. The dividend was deducted. I do not know exactly what you mean, \$125.00 and dividends?

Q. That was what it brought?

A. Yes, that is the lowest I know of it being sold.

Q. Look at the paper shown you, Complainants' Exhibit "10" and state what you said about that on your cross-examination, as to what it was for?

A. That money was collected from grinding wheat in the mill it was what was due to Jose L. Perea, Segundo and Julian.

Q. Whose handwriting is the endorsement?

A. Guadalupe Perea's; I think that is her own handwriting.

Complainants offer in evidence check marked Exhibit "10."

Q. In those notes that were given at eight per cent. interest, I believe you testified on your cross-examination that they were given for various classes of property as well as for some money. Do you know whether or not at that time Mrs. Perea was lending any money at eight per cent. interest?

A. I do not. She had some money in the bank there, I do not know whether all of it or not, at 4 per cent.

172 A. She did not hold any.

Q. At the time she had the money there?

A. Yes. Afterwards she had that thirty-two shares of those two children, but at that time she did not have them yet.

Q. The estate was the owner of stock in the bank at that time?

A. Yes.

Q. How much?

A. Four hundred and fifty shares, I think.

Q. Can you state what has been the average annual return from sheep of that class and description of those owned by Mrs. Harrison, say for the last six years, where they have been kept and cared for by the owners—I mean net annual rent?

A. That is hard to tell, because there is expense, it is hard to calculate the loss and profit.

Q. You have had a large number of sheep yourself during these last six years, haven't you?

A. Yes. You can always estimate on making at least 50 cents per head.

Q. Net?

A. Net. If they are well taken care of, when sheep were put out on partido.

Q. It is usual and customary for the partidaria to give security, is it not?

A. No, not always.

Q. Is it sometimes done?

A. Yes. I have some sheep with mortgage myself, and others I have by responsible parties signing the deed with the partidaria.

Q. Exceptions then are made in special instances?

A. Yes. When you think the partidaria is not a responsible man and have no confidence in him, you ask for security.
173 As a general thing you find men that have 2,000 or 3,000 head of sheep and they want 2,000 or 3,000 more, you do not ask any security but their own name. Of course you deed the sheep as your own, record the ear-marks as your own, and they answer for them. He has no right to sell his own then.

Q. Where ordinary care is exercised in the management of a sheep business, how much, if any, is the risk of putting sheep out on partido in excess of the risk of lending money?

A. I do not see as there is much more risk at all.

Recross-examination:

Q. Did you ever lose any money by partidarias, Mr. Perea?

A. Yes.

Q. Are they not generally poor men?

A. Not necessarily.

Q. I ask the question generally.

A. No. As a general rule you would not give sheep to a man who had nothing to answer for them.

Q. Their real-estate holdings are not generally very valuable?

A. As a general rule you give sheep to men—for instance a man will have \$700.00, will have at least 1,500 or 2,000 of his own or else you don't give them to him at all. For instance, I gave sheep to a man in Atrisco who had no sheep of his own, he had real estate there valued at maybe \$1,500, he had been offered 1,500 head of sheep for it, and besides his father-in-law signed for me. A man may give sheep to a man who is not responsible. He may also

lend money—but that is his own lookout, but you can find perfectly responsible men, as good parties as you can lend money in a bank to.

174 Q. You referred to that check for \$20.00 for grinding at the mill; how do you know that was the consideration of the check?

A. Because I told Benecio to pay him in a check so as to keep the check.

Q. Pay who?

A. Pay Mr. Harrison.

Q. At the time that check was given, Dr. Harrison had nothing to do with this business, had he?

A. I do not think he was married to her at the time. When I say Mrs. Harrison, she was afterwards Mrs. Harrison, and sometimes I say Guadalupe and sometimes Mrs. Harrison. Of course I mean the same person.

Q. Were you attending to the matter of collecting tolls or receipts of the mill at that time?

A. No. I had nothing to do with it. Perea Bros. were the ones attending to it.

PEDRO PEREA.

Taking of testimony adjourned until Friday, April 8th, 1892.

MARIANO PEREA, being first duly sworn, testifies as follows:

Q. State your name?

A. Mariano Perea.

Q. Are you acquainted with the parties in this suit, Pedro Perea vs. Dr. Harrison, *et al.*?

A. Yes, sir.

Q. Were you acquainted with Mrs. Guadalupe Perea de Harrison in her lifetime?

A. Yes, I was acquainted with her.

Q. And Jose L. Perea, Segundo?

A. Yes, sir, I knew him.

Q. How were you related to him?

A. I was a half-brother to him.

175 Q. Did you have any transaction with Mrs. Guadalupe Perea de Harrison with reference to the property of this child?

A. Yes, sir.

Q. What was that transaction?

A. She at first called Pedro and myself as she wanted us to be guardians to receive the property of the two minors, Julian Perea and Jose Leandro Perea, Segundo, but after a while she thought differently and she called for the property we had received for those minors.

Q. In what capacity had you received the property, as administrators for his father?

A. No. But she herself asking us to be guardians for those children.

Q. Did you have the property then?

A. At the time we had, yes, but afterwards it was turned over to her.

Q. First you had it and then turned it to her afterwards?

A. Yes, sir.

Q. What occurred with reference to this transaction?

A. Some notes were made to her for some sheep and some of the property that belonged to the minors. We made some notes for two years. They were to be paid semi-annually, one note at a time every six months when they should fall due.

Q. That was upon the purchase of the property by you?

A. Yes, sir; by me and Pedro for each of the minors.

Q. What property was it you bought? Do you know what items entered into the purchase?

A. I see in this receipt of the items, pages 602 and 603, excepting an item of money in Chihuahua that was not included in the property we bought from her.

Q. What was the amount of the item?

A. Of the money in Chihuahua? \$1,420; that silver was not included in the property for which we made notes to her.

Q. What do you remember about that particular item?

A. She said she thought she could dispose of that at a better figure than it was valued by us in the administration.

Q. What was the value you put on it?

A. I do not remember; I believe about 75 cents on the dollar, but I am not sure—something like that.

Q. The other items, money and other things, made up the amounts of the notes you gave?

A. I do not know that they do make up the amount, but I could figure.

Q. Do you remember the amount of the notes you gave?

A. No, sir.

Q. You do not remember that?

A. No. I believe there was four notes paid semi-annually in two years.

Q. Whose property was it you were purchasing—how many children's property?

A. Two minors, children of Mrs. Harrison, Julian and Jose.

Q. That \$1,420.00 there. How much of that belonged to Jose, or how much of that money was there in Chihuahua?

A. I believe the whole amount belonged to Jose; I do not think this included the other amount; this includes only the property of Jose, Segundo, not the property of Julian.

177- Q. Was that reservation of the silver only as to Jose, or as to Julian also?

A. I think the silver of the two children was turned over to her at that time.

Q. And reserved from the sale?

A. Yes, sir.

Q. Where do you live, Mr. Perea?

A. At Bernalillo.

Q. How long have you resided there?

A. I was born there—all my life.

Q. How close did you live to Dr. Harrison and Mrs. Guadalupe Perea de Harrison?

A. Something like 300 or 400 yards I suppose from my house to Dr. Harrison's; that is, the new house he built lately.

Q. Did you see this little child, Jose, often?

A. No. I saw him occasionally passing on the road, but we never visited.

Q. Do you know whether it was a healthy child or sickly?

A. I think he was a healthy child.

Q. Do you know in what style or what circumstances that child lived in or was cared for by Dr. Harrison? Do you know in what condition of life Dr. Harrison lived and the child with him?

A. I suppose they lived in comfortable condition.

Q. Do you know what would be the cost of living in Bernalillo for a person living in the style and circumstances of the family of Dr. Harrison?

A. For a grown person or child?

Q. I am speaking generally.

A. The cost of a grown person living at Bernalillo?

Q. Or a family living in the style they lived in?

A. I suppose, outside of travelling expenses, that is living in Bernalillo, \$1,500.00 or \$2,000.00 would keep a family very fairly, that is a family.

178 Q. What would be a fair price for caring for a child of the age of Jose for three or four years prior to his death, per month?

A. Probably \$25.00 or \$30.00 per month would be a high price.

Q. Do you know the real estate that belonged to Jose, 2nd, in Bernalillo?

A. Yes, sir; I had the piece of ground in my charge for about two years before we turned it over.

Q. How much of that land is there?

A. I should say something like six or seven acres.

Q. Do you know what it is planted in at this time?

A. At present in alfalfa.

Q. For how long time past?

A. Something like five or six years. I am not positive, it might be four it has been planted in alfalfa.

Q. You had the land in your charge two years before it was turned over to Mrs. Harrison?

A. Yes, sir.

Q. What would be a fair annual rental of that land at present?

A. It would produce \$150.00, I suppose.

Q. Net rental?

A. I think it would produce that now in alfalfa as it is.

Q. One hundred and fifty dollars annually?

A. Yes.

Q. Do you know anything about the improvements having been made on that land since it came into the possession of Mrs. Harrison?

A. It was planted in alfalfa since then.

Q. Do you know anything of its being repaired or fitted for that sort of cultivation?

A. I think some sand was scraped off, a little, and it was
179 fenced in since then. It was not fenced in before that.

Q. Will you look at Exhibit "A," which refers to that land and the work or improvements made on it, and look at the different items and see if you are able to state whether they are reasonable charges against the estate of the minor?

A. It appears to me that this charge is a little high.

Q. Which charge?

A. This charge for scraping and digging a ditch at \$100.00. I think that is a high price.

Q. What would you consider a fair price for that?

A. For digging a ditch, I think \$25.00 ought to dig a good acequia from one end of the land to the other. I think \$25.00 would be a good price.

Q. You know where that acequia runs.

A. Yes; I know where it runs.

Q. Is it a new acequia?

A. Yes. An acequia was taken out on the north side of the land from the main ditch to the road, from one end of the land to the other, to the public road.

Q. It was established there since the property came into the possession of Mrs. Harrison?

A. Yes; when it was improved, levelled off for planting alfalfa.

Q. Was the land irrigated before that?

A. It was irrigated from the other ditch that was incorporated.

Q. What necessity was there for this new acequia?

A. I do not know that there was an urgent necessity; probably by having an outlet of their own they could use water whenever they wanted it, and if incorporated they could not.

Q. There was benefit was there?

A. Yes, of course.

Q. Is that all you want to say about those items?

180 A. I don't know about the other items in particular, I suppose wire or nails or boards they used, the bills for the things will show what they cost.

Q. You have looked at all the items?

A. Yes; there is an item here of 28 days for scraping at \$2.50 per day, one man extra, \$70.00. I think for scraping the railroad track they would pay a good price like that. For scraping in our lands we would not pay any such prices or we would have dear land after paying those prices.

Q. Look at that item of cutting trees and stumps.

A. Well, it don't say how many trees, but usually there in our town you can find plenty of men to cut trees and make the wood for half the wood.

Q. How about digging up stumps?

A. They will make all the wood a tree has for half the wood that is taken out of it.

Q. And take the stump out along with the tree?

A. From under the ground?

Q. Tell a man to go and take a tree and the stump, will he take it for half the wood and—

A. I do not know as far as taking out the roots of the tree, but whatever would be in the tree they would cut the tree for half the wood.

Q. You notice no other item you care to say anything about?

A. There is another item of \$96.00 levelling up, besides the scraping. I think that would be a pretty big amount for leveling after charging for the scraping too. I do not know how the \$90.00 could be spent in leveling after the scraping was done.

Q. What do you think, after the scraping was done, the leveling ought to be?

A. If the men scraping the land knew their business, they
181 could put the land level without the other men only having to make the ridges for the water to run through. I think that would be a minor expense—that is, if the men using the scraper had done their work properly.

Q. How much is there for scraping?

A. Seventy dollars for scraping and \$96.00 for leveling.

Q. What would you think would be a fair price for scraping and leveling?

A. I do not know what to say about this leveling item at all. If the men had scraped the land properly, as I said before, I think this item of leveling would be a very small amount. That is my opinion about it.

Q. Then you cannot answer this question?

A. Probably \$10.00 or \$15.00 for the leveling, if the scrapers had done their work. I think \$10.00 or \$15.00 ought to level it.

Q. Would \$70.00 be enough to secure good scraping?

A. I think it ought to. I think it is a good price. In the first place, I think \$70.00 was a pretty steep price for scraping, and besides that \$96.00 for leveling, I think it is exorbitant.

Cross-examination :

Q. Are you related in any way to complainant, Pedro Perea?

A. He is my brother.

Q. You and he and Jesus M. Perea were the administrators of the estate of Jose L. Perea, deceased?

A. Yes, sir.

Q. You say you had the property of these two minors in your possession. Did you have it in your possession in any other way than as administrators of the estate?

182 A. We had received—Guadalupe asked me and Pedro to receive the property of those two minors as guardians, when we began to distribute some of the property of the estate as administrators.

Q. Were you ever appointed guardian by the probate court?

A. No, sir.

Q. Never qualified as guardians?

A. No, sir.

Q. You took her receipt for the property that you turned over as administrators, didn't you?

A. Yes, sir.

Q. You referred to a receipt on page 602, Book E. Do you know where the original is?

A. No, sir.

Q. When did you last see it?

A. I do not remember of having seen it since it was made by her.

Q. When you say that item for \$1,420.00 Mexican money was not included in the amount for which the four notes were given, do you trust to your recollection or have you any memorandum to fix it?

A. I trust to my recollection, on account of her saying she could dispose of that to better advantage than we could.

Q. Do you remember the amount of the notes?

A. No, sir.

Q. Is this paper in your handwriting?

A. Yes, sir.

Q. What is that pencil memorandum on the first page?

A. That is a memorandum of some of the property that was coming to the minors.

Q. Is that the same property mentioned in that receipt on page 602 of Book E?

A. I believe that is part of it.

183 Q. Any more there than there is in Book E, on page 602?

A. I find two items are different from what is shown in this paper before me. There is one item of Book E, page 602, 316 and this paper only shows \$250.25; it is the fourth item on the paper and the fourth item on the book, and then the last item on Book E, page 603, is an item of \$18 that this paper does not show.

Q. What is that item?

A. For ewes —, \$18. In the item of money in Chihuahua there is a difference of 82 cents that this paper shows more than is in the book. Book E has \$1,420.00 and this item is \$1,420.82.

Q. Do you know when you made that paper out, Exhibit "A"?

A. No I do not recollect when this was made out, but from what it shows here, it is a private paper that I have myself of the property that I was receiving when Mrs. Harrison asked us to receive that property of that minor, Jose L. Perea. This was a private memorandum that I was keeping for myself of what property I was receiving from him. I remember this paper as keeping that for myself at the house.

Q. Is the writing in ink on the inside your writing?

A. Yes, sir.

Q. That shows sheep received?

A. It shows several items, sheep, lands, burros, grown wethers, yearling wethers, rams and kids, and from the different persons that these sheep were turned over.

Q. The person who had them on shares?

A. Yes, the names of the persons received from. They used to have them on shares and then I took them in my charge.

184 Q. This property on account of Jose L. Perea, 2nd, you delivered personally to Mrs. Guadalupe Perea?

A. We made a settlement with Guadalupe and I kept this property.

Q. That is, you mean, that when you made the settlement and gave the notes to her you yourself kept that property?

A. The sheep.

Q. That don't refer to the other property mentioned there other than sheep; it was only the sheep you kept?

A. Except any real estate, we bought all those items shown in Book E. It includes all those items here, cash, money and all these items, excepting this silver here.

Q. You yourself personally retained the money and all?

A. Yes, sir; we executed notes for all the property we had of those minors.

Q. What price was put in this settlement for full-grown wethers?

A. My recollection is that all the sheep were \$1.00.

Q. How about this item here of 250 yearlings. What were they put at?

A. I do not remember at present, but my impression is that all the sheep were bought at \$1.00, yearlings, wethers, and everything. I am not positive.

Q. This receipt shows 75 cents.

A. I believe they were valued at that.

Q. And you accounted for them to her at just what they were valued at by the administrators. Was there any increase in the price?

185 A. I do not remember; I think we bought everything at \$1.00, yearlings, wethers and ewes.

Q. If this is a correct copy of the receipt, and the property was settled for by giving notes, except the \$1,420.82 in Mexican money, the prices are fixed here at prices at which you accounted for them?

A. I think the difference is in this way. That receipt was made for the same figures that the administration had administered the estate of father, and that transaction with Mrs. Harrison was a private sale that we bought from her this property of the minors, but the receipt here given was at the figures the administrators had fixed.

Q. But you paid her by giving notes for all except \$1,420.82 in Mexican money, and the total amount of the notes would be the total amount of what was received?

A. Yes.

Q. State whether or not you delivered this memorandum to any one after you made it.

A. Most likely I had it over there at Mrs. Harrison's when we were settling, and I might have left it there, but I know it is my handwriting.

Q. Do you know where you got these figures, \$15,566.61½, from?

A. This \$15,566.61½ is the sum total of this list.

Q. If there was any difference in price of the yearling sheep and the other sheep, may not the deduction on that account have reduced that amount double to the sum for which the four notes were to be given, and also taking into consideration the difference in the Mexican money?

A. I do not remember anything about the amount the notes were made for.

Q. What is this \$7,783.31?

186 A. I do not remember this, but it shows here that it is \$31,000.00. It might be the figures of the four notes.

Q. You take the \$15,566.61½, which is presumably the share of one minor, multiply by two which gives you \$31,133.23, which would be the share of both minors for which the four notes were supposed to be given, divided by four gives \$7,783.31?

A. That is what it looks like here.

Q. And the \$15,566.61½ you get by adding together the sum that appears on that paper, including the \$1,420.82?

A. Yes, sir.

Q. The receipt was given on the same date the notes were given—that is you took the receipt from her on the same date the notes were executed and delivered to her?

A. I don't remember as we did, but it is likely. When we executed the notes, I suppose she gave a receipt.

Q. If the \$1,420.82 was not included in the amount for which the notes were given, can you state how that amount was reached other than it appears on the fact of that paper in your own handwriting—the amount for which the four notes were given?

A. I do not remember the amount the notes were given for.

Q. Do you know anything about what this note was given for or when given?

A. This note was given in the renewal of one of the notes we had originally made to Mrs. Harrison.

Q. Do you know whether the interest had been paid up on the note for which that was given in renewal?

A. This note is charged I think two years that had passed from the time it was originally made at eight per cent.

187 Q. Can you tell from that how much the original note was for?

A. Seven thousand five hundred and fourteen dollars and ninety cents.

Q. That must have been the amount for which each of the four notes were given, was it not?

A. Yes, sir.

Q. Do you know how the \$1,420.82 in Mexican money was paid when it did not go into the amount of the notes?

A. I believe it was paid by check against Felix Mescyra in Chihuahua.

Q. Was he a banker in the city of Chihuahua?

A. He was the man that had charge of some property of father's in Chihuahua.

Q. Is he living there now?

A. I suppose so. I haven't heard.

Q. Did you see the check delivered?

A. I took it over to Mrs. Harrison.

Q. Who drew the check?

A. I believe the administrators of the estate.

Q. Was it signed by all three, or only one?

A. I cannot recollect.

Q. Can you state your best recollection of it?

A. No, I do not remember.

Q. Do you remember whether or not Pedro Perea, the complainant, had a bank account at that time in the city of Chihuahua?

A. I do not know. He might have had.

Q. You do not remember whether he had or not?

A. No.

Q. What was Mexican money worth at that time in New Mexico?

188 A. I do not remember what it was worth. I believe the administrators were paying 75 cents on the dollar for Mexican money.

Q. You say that a family could live on \$1,500.00 or \$2,000.00 per annum, or could at that time in Bernalillo. Could a family in good circumstances live comfortably without traveling expenses on that amount?

A. I think so. I think that is a good living.

Q. A family of how many? Does the number make any difference?

A. The size of the family would make a difference—but three or four persons in a family.

Q. Do you know whether they incurred any traveling expenses in connection with the minors?

A. I don't know.

Q. Do you know whether any were necessary?

A. I do not.

Q. On account of the health of the minor, Jose L.?

A. I don't know anything about it.

Q. You say you think \$25.00 or \$30.00 would be a high price for the support of a minor six or seven years old living at home in Bernalillo?

A. I think that is a good allowance for the support of a minor, yes, sir.

Q. Say \$25.00 per month for one minor, how much would you allow for the two other persons in the family, adults?

A. That depends altogether on what style they wanted to live in.

Q. In such style as Mrs. Perea and this family was supposed to live?

A. I suppose a grown person could live on \$100.00 per month.

Q. Including servants and household expenses?

A. I am not including servants.

189 Q. You say a family could live for \$1,500.00 or \$2,000.00?

A. I say \$100.00 for each person. I think that \$2,000.00 is plenty enough for a family to live in Bernalillo.

Q. Provided in good health and no extra expense?

A. Yes—for living in Bernalillo.

Q. Do you include in that estimate what they would pay for servants?

A. Yes, sir.

Q. And nurse for the minor if they had one?

A. I do not see that there was any necessity for the nurse for a six-year-old child. I am not including the nurse.

Q. That would depend on the child's condition of health and strength.

A. Yes, sir.

Q. You do not know whether it was sickly or not?

A. I do not think he was. I saw him out around most of the time—then he took a hard sickness and died.

Q. As a matter of knowledge, do you know?

A. I do not know whether he was sick or not.

Q. If you came to the conclusion that he was not sick, it would be for the reason that you saw him outdoors playing?

A. Yes, sir.

Q. Do you know whether they ever took him to St. Louis to have him treated for his eyes?

A. I do not know.

Q. You say you are acquainted with the piece of real estate in Bernalillo referred to as having been planted in alfalfa—that you had it in your charge for a couple of years before it was turned over to Mrs. Perea. How much would it rent for before these improvements were put on it?

190 A. It was out on shares to the men who wanted to work it for half of its produce.

Q. How much would you get in that way?

A. Probably about \$50,000 per year—in that neighborhood.

Q. Do you think you ever got \$50.00 for it while you had it?

A. I got corn and wheat. I never sold it but used it in the house, but I think it was about that.

Q. Do you know how much corn and wheat you got?

A. No, sir.

Q. Have you any way of telling—any book accounts or anything?

A. No.

Q. You think it would bring \$150.00 since it was improved?

A. I think so.

Q. If it would pay \$50.00 per annum before and by an investment of \$500.00 it was made to produce an extra \$100.00 per annum for several years, you would consider that a good investment?

A. Yes.

Q. You consider 20 per cent. on an investment pretty good return don't you?

A. Yes, sir.

Q. That land is improved by fencing, water gates and the way it is leveled better than any piece of land in Bernalillo, isn't it?

A. I would not say better than any piece of land in Bernalillo.

Q. Do you know any improved as well?

A. Yes, sir.

Q. Equally as well fenced?

A. Yes, sir.

191 Q. And as level?

A. Yes, sir.

Q. I understand you to say that it was not necessary after scraping to level it. Is it usual after you have scraped land in this country in order to properly irrigate it to make it as level as possible and throw up the ridges?

A. I think if the man that used the scraper had known his business that he did not need to go and empty the scraper in piles so as to occasion such a big cost to level it afterwards.

Q. If you are scraping land that has not been cultivated or parts of a tract that have not been cultivated, when the part is scraped in one place and deposited in another, doesn't it generally leave a little round hillock?

A. If they want to dump the scraper at once it will leave a hill where it is dumped, but they don't need to; they can gradually empty the scraper; besides this ground was cultivated ground, it had been irrigated before, and it was only some sand that was piling where an old wall used to be, and this is the same that was leveled off, I understand.

Q. Was the whole of it cultivated?

A. The whole of it had been cultivated.

Q. Was it a regularly shaped tract of land?

A. It would not irrigate as well as it does, but it irrigated before.

Q. Suppose the amount fixed there was for leveling and also included making the ridges, would that be excessive?

A. I suppose it would.

Q. Do you think it is still excessive?

A. Yes, sir; because making the ridges, forming with a plow and making a little higher with a hoe is a very slight affair.

192 Q. It makes a great deal of difference in the irrigation of such land as to whether perfectly level doesn't it?

A. Yes.

Q. If planted in alfalfa it will come up and grow nicer so it can be cut by a machine when perfectly level?

A. It goes better, yes; but the way of irrigating here in the country will always compel you to make a ridge to hold water.

Q. I mean, of course, when I speak of its being level, the land between the ridges perfectly level—I do not mean without any ridges, but level between the ridges.

A. The machine would run smoother.

Q. And save more alfalfa?

A. Likely.

Q. The alfalfa would cut better?

A. Yes, sir.

Q. And in the end isn't it more economical to have the land level?

A. Yes, sir; I think it is.

Q. What is the length of that acequia?

A. I have never measured the land from the ditch to the road, but I suppose it must be in the neighborhood of 500 yards, more or less.

Q. And what is the width and depth?

A. There is no depth at all, just on the ground I suppose.

Q. And banks turned up?

A. Yes.

Q. What is the width between the tops of the banks?

A. I do not know; I never watched it close.

193 Q. Say about $2\frac{1}{2}$ or 3 feet wide and $1\frac{1}{2}$ feet deep, do you think you could get that amount of work done at 5 cents per running yard?

A. We have been making those kind of ditches home. I made one myself from the main ditch to my land. I had about three times as long a ditch as that, clear up to the end of my other land. I had probably 1,500 yards of ditch, and I don't think the 1,500 yards has cost me \$100.

Q. Did you ever figure it up?

A. No, I never did, but the last part of the ditch I made is 700 yards and eight men made it in one day at 50 cents a day—I paid them and furnished two meals per day.

Q. That is cheap labor isn't it, even for this country?

A. That is the price we hire labor in Bernalillo.

Q. Have you ever found it to be the case that cheap labor is the more costly in the end?

A. I don't know. We always try to hire our labor as cheap as we can.

Q. You say you could not afford to pay what the railroad company pays for the same work. Isn't it a fact that the railroad company tries to get its work done as cheap as it is possible to get it properly done?

A. I think it does try.

Q. Speaking about taking out stumps, is it necessary to get the roots out to cultivate the land?

A. I do not think it is necessary, I have taken out cottonwood trees on my land and never took out the roots, always took as much as I could so as not to have the roots strike on the plow for fear of breaking the plow.

Q. Did you cut the stump out?

A. Yes, sir.

194 Q. When you get them to cut trees for half the wood the tree will make they leave the stump standing and cut them off above the ground?

A. If they don't make that agreement, they do.

Q. Would they cut the tree and take the stump out and clear it all up for half the wood?

A. I think you could get them to take the stump out, too, if you make the agreement beforehand.

Q. What is the custom about that up there?

A. I don't know as there is any custom at all.

Q. In speaking about these different items in connection with this piece of land, you don't know whether these amounts were actually paid, or not, or the labor actually performed?

A. I don't know anything about the payment or the labor at all.

Redirect examination:

Q. Upon whom was it you said the check for the payment of that money, \$1,420.82, was drawn?

A. Upon Felix Meseyra from Chihuahua.

Q. In whose favor?

A. I believe it was drawn in my favor.

Q. Will you look at this and see if it will refresh your memory in regard to that transaction, the stub of check shown? Did you make that memorandum?

A. Yes, this is my handwriting.

(Shows witness stub of check, or what purports to be stub of check, dated January 27, 1885, for the sum of \$2,841.64.)

Q. Look at that and state whether or not the stub shows the check was drawn payable to the order of Mariano Perea?

A. Yes, sir. This is the check.

Q. What was that check drawn for?

A. This check was drawn to pay Guadalupe Perea, Mrs.
195 Harrison, the silver of the two minors, Julian Perea and Jose L. Perea, Segundo.

Q. What is the meaning of those two items on the stub?

A. Those are the names of the heirs of father that had \$213.59 coming of that silver to each of them, J. M. Perea, J. M. Castillo, Justiano Castillo, M. Perea, Benicio Perea, Pedro Perea, Jose L. Perea, Cesario Perea, Barbara Perea, for rents for the year 1884. These parties are heirs of my father, who had \$213.59 coming from rents of property in Chihuahua, and they all gave me this check to give to Guadalupe Perea on the silver. This check was, I suppose, originally drawn by the administrators, but they were rents that were due to these parties, heirs of my father.

Q. You state that these parties consented to your taking these rents and paying them in check to Dona Guadalupe for the minors?

A. These parties consented in my using this silver to pay Guadalupe.

Q. To the interests of those minors?

A. Yes, sir.

Recross-examination:

Q. How much rent was coming to each one of the heirs on that stub?

A. It don't say. By adding these parties and this \$213.59 men-

tioned in the stub to the amount for which the check was drawn \$2,841.64, have the total amount of rent coming to the nine heirs.

Q. You say that this check was in payment of the amount coming to the two heirs from that money?

A. Yes, sir.

Q. This check was made payable to your own order, wasn't it?

A. Yes, sir.

196 Q. Did you send the check to the bank and collect it yourself and turn the money over, or what did you do?

A. I took it to Mrs. Harrison.

Q. Did you endorse it?

A. I suppose I must have endorsed it—the check was to my favor.

Q. Did the account in the bank stand in your name?

A. It did not go to the bank; it went to Chihuahua. I don't understand. It wasn't the bank in Santa Fé. This check was drawn to the Bank of Chihuahua.

Q. Then you must have money to your credit in the Bank of Chihuahua?

A. This money of these heirs of father that gave me the privilege, placed that money to my credit.

Q. What I am trying to get at—whose name was signed to the check, and in whose name did the bank account stand on which the check was drawn?

A. I believe the check was signed by the administrators.

Q. All three?

A. I don't know, but I believe that the three usually did sign checks, whether it was the three that signed this, I am not positive.

Q. You were mistaken awhile ago when you stated about the check being drawn on the gentleman you mentioned?

A. No, sir. Felix Meseyra—he is the man who manages the bank.

Q. He is manager of the bank?

A. Yes, sir.

Q. And when you mentioned him, you meant on his bank?

A. Yes, sir.

Q. Has the check ever been returned?

197 A. I don't remember if it has or not. I believe not.

Q. Have you ever seen it since you delivered it to Mrs. Harrison?

A. I never have. To my recollection, I have not seen it.

Q. The settlement you had with Mrs. Perea, afterwards Mrs. Harrison, was on December 10, 1884, wasn't it?

A. Yes, sir.

Q. That check was not drawn until January 27, 1885?

A. Yes, sir; it appears that way here.

Q. Can you explain why the check was not drawn and the money paid at the time of the settlement?

A. I suppose she trusted to my word taking the silver, as she said she would rather have the silver. There was nothing that held me taking that silver to her but my own honor.

Q. In other words, you mean the check was not delivered or the silver paid until then?

A. We wrote to the house in Chihuahua to send a statement of dividends of rents until January; they sent them, and then we made what was coming to each of the heirs and then I asked my brothers—those heirs stated here—to let me have their silver so I could pay Mrs. Harrison, as she wanted the silver.

Q. Then on the 11th of December, when you made the settlement, you did not know whether you had that much money on hand?

A. I had no silver on hand at that time, but I was going to get the silver for her.

Q. Was that \$1,420.82 money which was then in the hands of the administrators for past rents—for rents collected prior to December 11th?

198 A. Those rents were not those coming due, but had fallen due in 1884 as it states here.

Q. Do you know whether they were collected or not?

A. At the time, no, sir. In December 11th when we made the settlement with her, I don't know how much money was coming.

Q. Did you know the amount?

A. No, sir.

Q. The amount which you ought to have?

A. I knew the amount that was required for me to give Mrs. Harrison, yes.

Q. On account of past collections of rents?

A. Not on account of rents. I don't know how much was due on the rents.

Q. Then on what account did you owe the minors, \$1,420.82?

A. This money was money that was divided to the minors previous to this, that we had already received, as we had not received the property of the minors previous to this settlement with Mrs. Harrison.

Q. But you did not have it on hand to deliver on December 11th, '84, and did not know how much until you received advice from Mexico?

A. Yes.

Q. Did you owe Mrs. Harrison herself, on her own account, any Mexican money which you paid her?

A. Not to my recollection.

Q. Are you positive?

A. I am not positive. I might have had some transaction with her, but I do not remember of having any silver transaction outside of this.

Q. Of course when I say you, I mean all the administrators?

A. I believe we did turn over silver to her on her own account.

199 Q. Do you remember whether you turned it over to her when the receipt appears dated, or afterwards, as you say you might have done in this case?

A. I believe that the money coming to her from the estate had been turned over before this transaction.

Q. But have you any positive recollection as to whether in those cases you paid the money on the date she receipted, or afterwards?

A. No, sir. I have no recollection about it.

Redirect examination :

Q. Is that paper in your handwriting, No. 10?

A. Yes, sir; this is my handwriting.

Q. You stated that money was distributed arising from rents, on the 27th day of January, 1885, didn't you?

A. Yes.

Q. Looking at what purports to be a stub of a check drawn in favor of Guadalupe Perea for \$313.36, do you know to what that referred, or if there was any such a transaction as that?

A. This refers to the rent that the other minor of Mrs. Harrison was entitled to, Julian, rents due to Julian for the year '84.

Q. Jose and Julian?

A. Yes, rents due to the two minors for the year '84.

Q. And that \$2,841.00 was to settle up rents that had been collected previous to '84?

A. This was for the same rents of the same year, '84.

Q. Come out of the same money?

A. Yes, sir.

Q. But it was to settle up this indebtedness?

200 A. This was to settle up money that we had received from these minors before this \$313.00. This was rent due that year, '84, that I did not receive. We turned it over to her and made a separate check. This other was money previous that had been received by us.

Q. And it included the amount of \$1,420.82 referred to in the receipt?

A. Yes, sir.

Re-recross-examination :

Q. Mr. Perea, can you explain why, when you paid the same person on the same date and at the same time two sums of money, one for \$313.00 and the other for \$2,841.00, that you draw two separate checks on the same date, one payable to the order of the person you say you are paying and the other payable to your own order. Why didn't you draw both checks in one?

A. Because we did not want to mix up the rents we were dividing that day for those minors and money that we received ourselves from those same minors and was already due to Guadalupe in our settlement.

Q. Why would it mix it up when you paid \$2,841.64 to Mrs. Perea to draw the check in her own name? Could you not have made the same explanation on the check stub, even though the check was drawn in her name, that you have made when the check was drawn payable to your own order?

A. Because these brothers of mine had loaned the money to me and that money had to appear over there as being set on my name.

Complainants offer in evidence memorandum explanatory of witness' remarks.

MARIANO PEREA.

S. M. FOLSOM being duly sworn, testifies as follows:

Q. State your name.

201 A. S. M. Folsom.

Q. Where do you reside and what is your business calling?

A. Albuquerque, N. M. Banking business.

Q. How long have you been a banker in Albuquerque, N. M.?

A. A little over six years.

Q. You know what are the ruling rates and interests on money loaned on acceptable security for the past six years in New Mexico, during the time you have been banker in Albuquerque?

A. Well, I should say that there had been some slight change of rates in that period. I think money has commanded from 10 per cent. up during that time—mostly 12 per cent.

Q. In what sums could it be loaned at that rate and upon what sort of security?

A. Well, I think large sums could be loaned within a reasonable time and good security—not in one day perhaps.

Q. And upon how long a time ordinarily?

A. That will vary. Real-estate security can be written from one to five years, in some instances commercial paper.

Q. Amounts ranging from what, up to how large a sum?

A. That would vary with circumstances. It would be hard to say. Might be able to loan \$10,000.00 or \$20,000.00 in a block perhaps, but would not average that.

Q. At 12 per cent.?

A. Yes.

Q. Suppose money was offered at 10 per cent. what opportunity would there be for loaning it for a long time and in how large sums with any kind of diligence exercised?

202 A. A large amount could be loaned within say 30 days, I should say.

Q. At 10 per cent.?

A. Yes, sir; 10 as a minimum.

Cross-examination:

Q. Have you known of any large amounts, or any amounts, trust funds in the hands of guardians or administrators loaned out in New Mexico on real-estate security since you have been in the banking business in the Territory?

A. I don't know that I have.

Q. You have known money to be loaned at less than 10 per cent., real-estate security, in New Mexico?

A. I don't know that I have any direct knowledge of any New Mexico money being loaned, I think.

Q. You have heard of it?

A. Yes—indirectly.

Q. You say you don't know of any New Mexico money? You have known of money coming from abroad and be loaned for less?

A. Yes.

Q. Is there any difference in the value of money that comes in from abroad and that comes in from New Mexico?

A. I suppose not.

Q. Isn't it a fact that almost all the money invested in real estate and loans comes from abroad?

A. A large amount.

Q. Quite the larger portion?

A. Yes, in all probability.

Redirect examination:

Q. That money that is gotten from abroad, where it is gotten at less than 10 per cent. is considered what might be called a soft snap, isn't it?

203 A. Perhaps, if it comes from special channels.

Q. Any resident of New Mexico having money can invest it at ten per cent. as minimum rate on first-class security?

A. I think so, if he understood his business.

Recross-examination:

Q. Do you know of \$25,000.00 being loaned on bonds at eight per cent. in the past twelve months in New Mexico?

A. Yes, sir.

S. M. FOLSOM.

It is stipulated by counsel for plaintiff and defendant that Exhibit "12" shows the actual dividends paid during the period to which it refers.

The taking of testimony is herewith postponed until Tuesday, April 12th.

It is agreed that right is reserved by the plaintiff to offer hereafter the original receipt which is recorded on pages 602 and '3, in Book E of the Administration, Bernalillo county, provided they are able to procure it, and if not, they are to have the right to account for the loss of the original and offer the record as part of their case-in-chief.

It is stipulated by the counsel on both sides that the Catron money, about which the witness, Pedro Perea, testified, has not been paid, and for all purposes of the hearing of this cause, that is to be treated and considered as a fact established.

Plaintiff herewith closes his case.

Defendant calls the following witnesses:

Dr. G. W. HARRISON, being duly sworn, testifies as follows:

Q. State your name.

A. George W. Harrison.

204 Q. Residence?

A. Albuquerque.

Q. You are the defendant in this suit?

A. Yes, sir.

Q. State how long it has been since you first made the acquaintance of Guadalupe Perea de Harrison.

A. I think since the fall of 1881.

Q. Are you her administrator?

A. Yes, sir.

Q. When did she die?

A. The 20th day of October, 1889.

Q. When did you qualify as her administrator?

A. I do not remember the exact date—the latter part of '89 or the first part of '90.

Q. When did you first have anything to do with the business connected with the property of the estate of Jose L. Perea, 2nd?

A. I suppose that might date from September, 1885. I don't think there was really any actual business until the first report was made.

Q. You were the husband of Mrs. Guadalupe Perea de Harrison?

A. Yes, sir.

Q. You never had anything to do with the business connected with this estate until the first report was made?

A. I don't think it was before that.

Q. When were you and the deceased, Guadalupe Perea, married?

A. The 2nd of September, 1885.

Q. I see the report, Exhibit "5," is signed by you. From what source did you get the data from which you made that report, if you made it out?

A. From the reports on record in the probate clerk's office 205 of the administration of Jose L. Perea, Sr. I had nothing else to get them from. There might have been some money received for which a receipt was given before this report was made, but I don't remember anything of importance before this report was made, that there was any transaction I had anything to do with.

Q. Look at report filed 6th day of March, A. D. 1888, and state what you know as to the data from which that report was made, Exhibit "7."

A. I believe this report was made from the same data. The notes that were given for the interest of that estate, belonging to that estate, were included here.

Q. As to the other items with which the guardian is charged in that report, state what you know about them, item for item.

A. There are some cash items here—I think all the cash items of what was received from the estate of J. L. Perea, Sr., were taken from the report of the administrators.

Q. What part of the reports do you refer to and where did you find those reports?

A. On record in the probate clerk's office.

Q. You say the reports of the administrators with reference to what—you don't mean the reports at large?

A. The reports in which they state what they distributed to each heir.

Q. Do you confine yourself to what was distributed Jose L. Perea, 2nd, as shown by the records in the probate clerk's office, or do you mean the others?

A. I looked at all, but in looking up for this one, put out what pertained to this heir.

Q. Take for instance the item, Jan. 27, 1885, cash in Chihuahua money, \$30.57, carried out, \$22.92, state where that item came from.

A. That item is in the receipt as recorded in the books. I also, of course, took from all receipts that are recorded in the probate clerk's office.

Q. Have you any receipts showing that?

A. No, only from the book. The receipt that \$30.57 was shown is on the bottom of page 603, Book E.

Q. Take the next item, December 11th, 1886, cash received, \$128.22.

A. That must be from the reports.

Q. Is there any receipt there on the date of December 11th, 1886, with reference to that item?

A. I take that item from the report of the administrators found on page 327 of Book E.

Q. The next item, cash received from same on account of dividend on stock in the First National Bank of Santa Fé, December 11th, 1886, \$1,308.12. Where does that item come from?

A. It comes from a receipt signed by M. S. Otero for Guadalupe P. Harrison, on page 600, Book E.

Q. How do you arrive at the amount charged in the statement, \$1,308.12, and is that correct?

A. There is a mistake of \$2.00; it should be \$1,306.00, according to this receipt.

Q. How much does the receipt show?

A. Two thousand six hundred and twelve dollars and twenty-four cents; that was for two heirs, Julian and Jose L. Perea, 2nd.

Q. The next item, stock of the First National Bank of Santa Fé, of the value of \$1,600.00; where does that come from?

A. Taking it from the certificate of stock as sent from the bank.

Q. That was the par value of the stock?

207 A. Par value.

Q. Was that stock ever sold?

A. Yes, sir.

Q. When?

A. February, 1891.

Q. How much was received from it?

A. Including dividend that was supposed to be due, it was \$1.33. The price was really \$1.25, but including the dividend it was \$1.33.

Q. What was the stock worth at the time?

A. I suppose it was probably worth that. I was glad to be able to sell it for that. I had been trying for a number of months to sell and finally had a chance to sell to Mr. Shelby of Santa Fé and sold.

Q. Was that the best price you could obtain?

A. Yes, sir.

Q. The next item, stock in the Bernalillo Bridge Company, par value, \$71.42. How was that turned over, how evidenced?

A. At the time there was a certificate of stock given to Jose L. Perea, 2nd, and his mother together, and that was the amount of it.

Q. His interest?

A. Yes.

Q. A joint certificate in her name?

A. It was in her name.

Q. What was that stock worth then?

A. It is hard to tell. That is some property I have been trying to sell but cannot get an offer.

Q. What is it worth now?

A. I would not give ten cents for it.

Q. Where is that certificate?

A. I have it.

Q. You have it in your possession?

A. I believe that this interest, the \$71.42, is included in the certificate that I hold, but I really got the exact amount from the reports of the administrators of Jose L. Perea, Senior.

Q. Can you turn to it there?

A. There is an item of that bridge stock in the receipt given December 11, 1886, but I must have taken it from the receipt of other heirs, considering this heir had the same interest in amount that was divided, for instance, on page 598, Book E, Hubbell's receipt, or Pedro Perea's receipt on page 599, the same.

Q. On January 27th, 1885, sheep from the estate of Jose L. Perea, deceased, \$140.00?

A. That was taken from a receipt recorded—what purports to be the record of a receipt, on page 603.

Q. State how you reach \$140.00 as the value of the sheep?

A. The receipt is for sheep delivered to Jose L. Perea and Julian Perea, ewes, 202; lambs, 106; rams, 4, that equals 140 coming to Jose L. Perea, 2nd.

Q. In other words 280 sheep, and he was entitled to half?

A. Yes, the lambs are counted three lambs for two sheep.

Q. Counting that way, it makes 280 full-grown sheep at \$1.00, and half belongs to Jose L., 2nd.

A. Yes.

Q. Take the next item, December 11, 1886, sheep from the estate of Jose L. Perea, deceased, \$577.00. Where does that come from?

A. Page 327, Book E, administrators' report.

Q. Distributed by them on that date to the different distributees of the estate?

A. Yes, as reported by the administrators.

Q. The next item on the same date, interest in the Manuel Gonzales vineyard, per statement of the administrators of the estate of Jose L. Perea, deceased, how did you get that?

A. It is on the same page in the same book, 327, Book E.

Q. Now, where did you get the three items that immediately follow, of dividends on bank stock, February 1, 1887, August 1, 1887, February 1, 1888?

A. From the bank itself, from their statements and sending of their drafts.

Q. That was exact amount paid by bank?

A. Exact amount.

Q. February 22, 1886, received as dividends on bridge stock, \$8.57, from what source does that come?

A. That comes from the secretary of the company.

Q. That was the amount paid?

A. Yes, sir.

Q. Received as dividend on bridge stock, February 22, 1886, 30 per cent., \$21.42?

A. That was received.

Q. Exact amount?

A. Yes, sir.

Q. Was any other dividend on bridge stock received besides those two items?

A. I believe not. I don't believe there has any dividend been paid since that last item, but there has been an assessment at different times.

Q. Has the assessment been paid?

A. Yes, sir.

Q. Rents collected from real estate in Chihuahua, \$156.68, worth 75 cents on the dollar, \$117.51, January 27, 1885. What do you know about that item?

A. That is taken from a receipt recorded, what purports to be a receipt, Book E, page 604.

210 Q. The next item, January 30, 1887, rents for real estate in Santa Fe, 66.86.

A. That was from statement and check received.

Q. Have you the statement?

A. I think I have. That was taken from a letter from Pedro Perea, Exhibit "B," there is a check signed by him on January 30, 1887.

Q. Is that the check?

A. I think so; yes, sir.

Q. State how you arrived at the amount of \$66.86, that you charged on account of Jose L., 2nd.

A. According to the letter there was \$228.70 of rents belonging to the two heirs, Julian and Jose L., Second. In the letter it says to deduct \$94.97 on account of Tijon, which leaves \$113.73 for the two heirs, and makes 66.86, one-half, to each.

Q. I see the check is endorsed by you. You received the money for Mrs. Harrison?

A. Yes, sir.

Q. What did you know about how the \$94.97 was deducted on account of Tijon?

A. I have no information only what is in this letter. I did not

know whether it was for her individual part, or the children's part, or for whose part.

Q. The next item is to four per cent. received from the bank, on cash deposited there from time of its reception to death of ward, 18,401.98, carried out \$846.47?

A. That was interest in the First National Bank of Santa Fé—probably from one or two other banks. That was the amount of interest actually received.

Q. Coming to credits, I see the amount of interest in the Manuel Gonzales vineyard charged, also credited \$189.55. Explain it.

A. There has been nothing done with it up to the time that report was made. There had been no receipt from it, so I simply put it in as it was received.

211 Q. In what shape did you have it at the time this report was made?

A. Simply a statement.

Q. Real estate, personal property, or what?

A. Real estate. There was no deed made for the interest, simply a statement.

Q. The next item of credit I see \$566.00 for improvement on real estate of ward, as shown by itemized statement attached, marked Exhibit "A." Make any explanation about it you have to make.

A. The only statement that I can make is that was really the costs of the improvements.

Q. Were they properly made?

A. Yes, I think they were very well made. Probably the land is a little better improved than is customary in that country, but I think it was the proper thing. I think the results will show it from the other people's evidence.

Q. Was the expenditure for labor and material used, gotten as cheaply as you could get it?

A. I think so. I simply gave the men \$1.00 per day. I boarded them, which is customary, two meals per day and paid them 50 cents. To some men I had to advance them the money they wanted and I never got some of it back, which I lost myself.

Q. You estimated the pay at \$1.00 per day.

A. Yes, sir.

Q. By paying them 50 cents cash and giving them two meals?

A. Yes. I think there are some men that owe me to this day that did this work and I never got it, and lost it myself.

Q. What was the condition of the land before you made the improvements?

212 A. The land had been in cultivation in a way. There was a part of it I don't think had been irrigated for years and it was uneven. There was no ditch belonging to that land. There was ditch belonging to land in that neighborhood as it were, but it was a difficult matter to be able to irrigate, so I had the ditch put on the land.

Q. Do you know the length of the ditch?

A. I think between 500 and 550 yards, that is my opinion.

Q. And the size of it?

A. It is a good-sized ditch, I think it would average five feet probably, across the top and three feet at the bottom. The water boxes are extra good, there is one thirty feet long.

Q. Was the amount of scraping and work done as shown on this statement?

A. Yes, sir; I think the team used was an extra good one, and the man employed for that was paid extra, supposing he knew a little better how to do that work than most of the help we had.

Q. Now, the item, by amount expended in the cost of support and maintenance of ward, April 2nd, 1883, to August 25, 1887, less \$500.00 paid on that account by administrators, \$2,650.00. How was that estimated?

A. I think it was estimated at \$500.00 per year, if I remember right.

Q. Well, how was it estimated per month?

A. Between \$50.00 and \$60.00.

Q. State whether any vouchers were kept for the expenditure of this money—what does the sum include?

A. There were very few vouchers. Perhaps the circumstances were a little different than usual, my being a physician myself; physicians do not charge each other or their families, and
213 there were no bills sent. Of course, all my own services were always given without a bill, and medicines furnished outside of the support of the child.

Q. What does this bill include?

A. It includes everything for the child's support in every way, board, servants, clothing, doctors' bills, medicines, and everything.

Q. Did you have a nurse for him?

A. Usually. I don't know that I can say we had a nurse all of the time.

Q. From your knowledge of the cost of living, household expenses, was that a fair charge for the maintenance of a child of that age there at that time?

A. I think so, including all we have stated, medical services and all.

Q. What was the condition of the child as to health?

A. It was not a healthy child at all, though at times it would be apparently well for weeks.

Q. The next item, January and February, 1886, one-half of expenses, trip to Mexico, on account of health of ward, \$500.00. State all you know about that.

A. I think that was a very reasonable charge.

Q. Did you keep any actual count of the expenses of the trip?

A. No, sir.

Q. How did you arrive at that being half?

A. I know about the amount that was spent in traveling expenses and hotel bills.

Q. Was that about half of it?

A. I don't think it was half. It was one-third, I think.

Q. Who went on the trip?

A. My wife, myself and the child.

214 Q. And you think that was about one-third of the expenses?

A. Yes.

Q. Go ahead and state what benefit the child derived from the trip?

A. It was at the request of his mother. She thought it would be a benefit to him.

Q. What was the object of the trip?

A. It was a good deal on the child's account; the trip included a trip across the gulf of Mexico, which was recommended by physicians for the child.

Q. Across the Gulf from where to where?

A. Vera Cruz to New Orleans.

Q. The next item by one-half of the expense in a trip to St. Louis for the purpose of medical treatment of ward and medical treatment, \$400.00. Explain that item.

A. That trip was taken for the child principally on account of his eyes, to Dr. John Green, specialist.

Q. How much of that was paid out for medical treatment that you remember of?

A. That item is really the same as others I have stated. That is, really more for the trip, living, medicines and care of the child.

Q. Was any part of this paid out for medical attendance?

A. No; there was no bill made for any medical attendance on account of my being a physician.

Q. Is that a fair charge for the expense of the trip?

A. I think so.

Q. How long were you gone?

A. I think a little over two months.

Q. Who went?

A. His mother, myself and the child.

215 Q. The next four items for taxes, '85, '86, '87 and additional tax '87, have you any vouchers for them?

A. Yes sir, I have the tax receipts.

Q. Will you produce them?

A. Here they are.

Q. You have produced three receipts for '85, '86 and '87. What do you know of the additional tax paid for '87?

A. I believe I have it, but not here.

Q. Do you know where that tax was paid and what it was?

A. I don't remember.

Q. The next item, by cash paid for repairs on mill property in Bernalillo, \$40.00?

A. Here is the receipt.

Q. By amount of labor and expense, work done on Bernalillo bridge, for which there is no charge, what do you know about that?

A. At the time we did not put it in. I did not know what it was.

Q. Do you know what it was?

A. I could not be positive. I think it must have been over \$25.00.

Q. How did you arrive at the amount?

A. Every year two or three times every one has to pay, or go and help work on the bridge or furnish the labor.

Q. How is this done, by furnishing the labor or paying?

A. Usually by furnishing labor, wagon and team.

Q. Was labor, wagon and team furnished?

A. Yes.

Q. And you think it would amount to \$25.00?

A. I think so. '83, '84, '85, and '86 and '87, that is only \$5.00 per year. I think it must have been \$50.00.

216 Q. How many days would they work?

A. That would depend upon circumstances.

A. An average.

A. I think to just put it down as labor, it would be an average of 10 days per year.

Q. How much would be the amount of J. L. Perea, Second, and how much on account of Mrs. Harrison?

A. I was just accounting for him alone.

Q. Ten days' labor of one man do you mean?

A. Yes, I think it ought to average that.

Q. The next item is by amount of money refunded to administrators on account of rent of property, and turned over to her by mistake, \$67.60.

A. That was according to a letter that was written by administrators.

Q. You have the letter?

A. I haven't it here, but I could bring it tomorrow.

Q. Do you know whether it was actually refunded?

A. Yes, sir; at least it was so stated by them.

Q. Do you know whether it was deducted from money that was coming from J. L. Perea, 2nd, or from her?

A. I cannot remember that without seeing the paper; I can bring that letter that I have tomorrow.

Q. This is the letter of your own that you refer to as being in answer to the letter received from complainant?

A. Yes, sir; I refer to the other which was received and this, which was my answer to the other letter.

Q. What did you know about the transaction?

A. Nothing; that was really the reason that I wrote a conditional letter, that if that was the way the old man kept the accounts, and if that belonged to them.

217 Q. The next item of credit I see is funeral expense and last sickness of ward; by amount paid Dr. Longwill for services, \$125.00; have you any voucher for that?

A. Yes, sir.

Q. Dr. Wroth, trip to Bernalillo, \$10.00.

A. Here is a receipt, just his expenses, no fee.

Q. Funeral expenses, undertaker's bill, &c., \$120.

A. There is a voucher for \$90.00 from Montfort. The other was for necessary things connected with the burial.

Q. Did you get any vouchers of the balance?

A. No, I don't believe I have.

Q. What were they, in a general way?

A. The balance of the items were expenses of trip down here, and small articles, candles, flowers, &c.

Q. Priest's services, \$225.00.

A. Here are the items of that general bill; it amounts to 129.90.

Q. I see you have charged on January 30, 1887, cash received from W. T. Thornton on account of indebtedness turned over to him \$336.38; what do you know about any additional amount of \$117.79 being received by way of interest?

A. I don't know anything of it—or did not know anything of it at the time; if that was what it was, I have no objection to it, I simply took and gave credit to the different amounts that were made out by the administrators of Jose L. Perea, Sr., and that was the amount of Thornton's indebtedness as due this heir.

Q. Under date of January 27, 1885, what do you know of \$1,420.82 being received in Chihuahua by the administrators?

A. I don't know anything about it; I believe that is included in the list for what the notes were made out for.

Q. That was before you had anything to do with the business?

A. Yes, sir.

Q. Personally you know nothing about it?

A. No, sir.

Q. October, 1884, 757 sheep received from administrators, \$757.00; what do you know about that?

A. I know nothing about that.

Q. Have you ever, in examination of the administrators' accounts as filed in probate clerk's records, found a record of any such receipt?

A. No, sir.

Q. Examined carefully?

A. Yes, sir. Gone over everything. I have copies of all the reports made by them, written out by myself.

Q. Did you find anywhere where they have charged themselves with that many sheep being disbursed in the distribution of that estate?

A. No, sir.

Q. Texas, Santa Fe & Northern R. R. stock and bonds, \$333.58, Nov. 1884, do you know anything about that?

A. I only know they state in their reports that each heir and the widow had a certain interest in the bonds and stocks of that railroad company. I have not seen a bond or certificate of that stock.

Q. Do you know anything about the condition of this railroad company as to whether the stock and bonds were worth anything?

A. My understanding is that it is not worth much, if anything.

Q. March 16, 1885, to money received from administrators, \$496.71, what do you know about that?

A. Nothing.

Defendants offer in evidence exhibits marked "C," "D," "E," "F," "G," "H," "I," and "J."

The taking of testimony is herewith adjourned until Wednesday, April 13, 1892.

(Dr. HARRISON continued:)

Q. In making up this last report, you stated that you took your data from receipts on file and reports of disbursements and distribution of the estate of Jose L. Perea, Sr., by the administrators. Turn to the book and page of the record where these disbursements are shown?

A. The first report was page 318, Book E, commencing at page 318 and ending at page 338, transferred from page 338 to page 596 and ending page 604.

Defendants offer pages referred to by witness in evidence, Ex. "O."

Q. Turn back to the first report of the distribution—what does it show to have been distributed to Jose L. Perea, 2nd, and what is the date of it?

A. The date on which it was filed was 10th of May, 1884, and it shows distributed to Jose L. Perea, 2nd, \$15,586.38.

Q. Money or property?

A. Property. There is no specification as to what it was, but it was property.

Q. Turn to the next report. What is the date of that report?

A. The record says filed for record May 4th, 1885.

Q. What does that show as distributed to Jose L. 2nd?

A. This report states 1,575 sheep and \$496.71.

Q. What is the date of it?

A. Filed May 4th, 1885.

220 Q. Now, when you caused this report to be made out, what did you understand and from whom did you understand as to that cash and sheep mentioned in the report you have just referred to?

A. When the first report was made by Mrs. Harrison as guardian, made out by me, I went over the records myself and I made the report on the same date without consulting her with regard to what that report contained, but took it from the record and trusted it was right; but in making our final report I consulted her with regard to all those items, and she stated to me that everything that had been delivered before and up to December 10, 1884, was included in the notes given by the Perea brothers, &c., and others as securities.

Q. What notes were they?

A. Those four notes given.

Q. The notes mentioned in the final report?

A. Yes, sir.

Q. When you made out the first report, Exhibit "5"—you say the first report was made out by you?

A. Yes, sir.

Q. From what source did you get the data to make it?

A. From the reports of the administrators of Jose L. Perea, Sr.

Q. Look at the second report, Exhibit "6," and state where you got the items in that report.

A. The items in this report included the notes and part of the other report. Up to the time this report was made I had not gone into the matter as carefully as I should have done and had naturally to trust a good deal to the reports as made by the administrators.

This report was also made out by me and signed by me.

221 Q. What consultation had you had, if any, with Mrs. Harrison, before you made that out?

A. None, with regard to that item of \$2,071.71.

Q. Those reports state that some sheep were received in kind, the last report as well as the others, on account of Jose L. Perea, Second. Do you know when those sheep were disposed of?

A. I don't remember the exact date.

Q. Can you fix it in any way?

A. Of course those sheep were included in flocks we had of our own. They were not kept separate, and when a sale was made of course we expected to account for them in money, \$1.00 per head as had been the custom.

Q. One dollar per head from the time you received the sheep?

A. Yes, sir.

Q. You do not know when the sheep were actually sold?

A. I am not positive.

Q. Were those sheep distinguished in any way, by marks or otherwise, from the other sheep that were turned over by the administrators to Mrs. Harrison on her own account?

A. No, sir.

Q. At the time of turning over was there any way of distinguishing one from the other?

A. No, sir.

Q. You don't remember when you sold your own sheep?

A. I can find that out. I think in the summer of 1887. I think that is it, but I can find out.

Q. If that is approximately, it will do. I asked you yesterday about some letters you had, one you received from Mr. Perea about the deductions on account of overpayments in rents, did you find them?

222 A. No; it was really a letter written to my wife, and I can't find it.

Q. Did you look for it?

A. Yes, sir.

Q. There were some other papers, did you find them?

A. Yes, sir.

Q. State what interest you have in the estate of Jose L. Perea, 2nd, others than that coming to you through your wife?

A. My wife inherited a half, $\frac{1}{2}$ ths, and I have since bought three, making $\frac{1}{2}$ ths.

Q. Whose interests have you bought?

A. Mr. Otero's, his wife's, S. A. Hubbell's, his wife's, and Jesus M. Perea.

Q. Have you got any evidence of it here?

A. I have all the papers except the one for Mrs. Hubbell's own interest. I cannot find the original, but it is recorded.

Q. It is recorded, where?

A. In the probate clerk's office.

Q. Produce the papers you have for the other two.

(Witness produces papers marked Exhibits "K," "L," "M," "N," offered in evidence.)

Q. You say the other conveyance of the interest of Mrs. Hubbell you haven't the original?

A. I cannot find it. I think I have it. It is recorded. I can get a copy of it.

Q. Do you know where you got the paper Exhibit "A"?

A. That is from my wife, she gave it to me.

Q. Do you know where she got it?

A. It was given to her by Mariano Perea, being a list of the property for which the notes were given.

Exhibit "A" offered in evidence.

223 Cross-examination:

Q. Did you see Mariano Perea give that paper to your wife?

A. No, sir.

Q. Do you know anything about that paper except what it shows on its face?

A. And what my wife told me about it.

Q. Whose handwriting are the words on the back of this paper, Mariano Perea's statement for notes to Jose L. Perea, 2nd, and Julia Perea, minors?

A. That is my handwriting.

Q. How much money have you today belonging to the estate of Jose L. Perea, 2nd?

A. All the report calls for.

Q. That doesn't answer the question, Doctor.

A. All that the report shows we have received.

Q. No more or less?

A. That is all I am supposed to have, what we owed the estate.

Q. Where is that money?

A. It is in my possession.

Q. Have you the money deposited in any banking institution?

A. Yes, sir.

Q. To whose credit?

A. My credit.

Q. Is it mingled with your own funds?

A. Not necessarily. I keep a separate account of it.

Q. Is there a separate deposit made of it in the bank?

A. No, sir.

Q. In what bank is that money deposited?

A. Most of it in the Bank of Commerce.

Q. Where is the balance?

224 A. I suppose all of it is there; I think I am responsible for the money, of course, and have what the report shows; I keep an account of the estate separate. I have not been keeping an account of the dollars and cents as far as a deposit is concerned, but I keep an account of all the moneys of the estate.

Q. Isn't it true, Dr. Harrison, that you have used this money exactly as you have used your own money during all of the time since the death of this child—since it came into the possession of your wife as guardian, or into your possession as her agent, that you have considered yourself responsible for the estate and have held yourself ready to pay it over, but in the meantime you have mingled it with your own funds and treated it as your money?

A. No, sir; I have always tried to keep enough to correspond with the amount to pay it over, say this afternoon, or from one day to another.

Q. You mean to say that you carry a cash credit balance sufficient to meet it?

A. Not exactly a balance, but a certificate of deposit that I could get at any time if I wanted by losing the interest.

Q. Isn't it true, Dr. Harrison, that you have mingled money of this estate with your own funds and used it exactly as you have used your own funds, at all times, that you have never attempted to keep separate the moneys belonging to this estate from the moneys belonging to yourself and wife?

A. No, sir; that is not true.

Q. Have you the money belonging to this estate separate today?

A. I think I answered that question.

Q. Will you answer it again?

225 A. I aim to keep enough balance that belongs to this estate to be able to pay it at an hour's notice, and have done so since our last report was made.

Q. I don't think you understand the question, if you had, you certainly have not answered it. Have you the money belonging to this estate separate and distinct from your own funds today?

A. Yes, sir.

Q. Where is it?

A. In the Bank of Commerce.

Q. What is the amount?

A. The amount of that report?

Q. Will you look at the report and tell me what the amount is?

A. We have always considered it necessary to keep half of it in that way; of course, as I testified awhile ago, I have bought three other interests since, but have always kept at least half of the amount belonging to the other heirs at the time of this minor's death, so as to be able to turn it over at an hour's notice; that amount is \$8,835.30.

Q. Will you please answer my question, Dr. Harrison?

A. It is not separate and distinct, it has no ear-marks.

Q. Have you ever, at any time since this money came into the possession of your wife up to this moment, kept the money separate and distinct from the funds of yourself and your wife?

A. I have kept it distinct in that way, to keep that amount of money so that I could turn it over at an hour's notice to the other heirs in case of necessity, in case I was called upon to do it.

Q. I understand you to say that you today have \$8,835.30 on deposit in the Bank of Commerce of this city belonging to
226 this estate separate and distinct from your funds.

A. That money is deposited by me and kept in a way so I could turn it over at an hour's notice.

Q. Well, you certainly understand, Dr. Harrison, what I mean by commingling this money with your own funds, don't you? If you don't I wish you would say so. The question I am asking you is, have you not from the beginning commingled this money with your own funds?

A. No. I have kept it separate in the way I told you.

Q. The way I understand you is that you have not kept it separate at all.

A. I kept it separate in that I did not allow myself to use that money. I kept that much money so I could turn it over at an hour's notice if I was compelled to do so.

Q. Have you a credit balance in the Bank of Commerce of this — today in your own name subject to your check, of \$8,835.30?

A. I didn't say I had it on balance, but I kept it in a way that I could turn it over in case I am called upon to do it.

Q. The money belonging to this estate, which you conceive to be the inheritance of your wife and to be yours by purchase of the interests of the heirs you have named, you have treated and used as your own money during this period, have you?

A. Well, to a certain extent. I think what I say should answer that question. Those three interests really would be taken from those heirs, of which Pedro Perea is one.

Q. How long has this money been in the Bank of Commerce?

227 A. Is that a right question? That is a private matter; but that is for you all to decide.

Q. If I did not think it was a proper question I would not ask it.

A. I don't know that I can answer it, and I don't think that I should. I can show that I have all that money on hand and can turn it over.

Q. I ask the master to request witness to answer the question.

(Master requests witness to answer the question.)

Q. How long has that money been in the Bank of Commerce?

A. I don't remember.

Q. Where was it before it was in the Bank of Commerce?

A. I don't remember that.

Q. Do you know where it was at any time since it came into your possession?

A. In the Bank of Commerce most of the time. At least since Bank of Commerce was started. In my possession of course since it has been in my possession.

Q. Do you understand the question, Dr. Harrison?

A. You mean in what other bank or in what other place?

Q. Yes, sir.

A. Part of the money has been in the First National Bank of Santa Fé, in the San Miguel Bank of Las Vegas. I don't remember the exact dates.

Q. How much of it has been loaned out?

A. I don't remember.

Q. Any of it?

A. No, sir. The only loaning that has been done—I hope my answer will be sufficient—the only loaning that has been done has been in the bank or banks at a low rate of interest on certificates of deposit, so I could, if there was any necessity for it, turn it
228 over when called upon to do so.

Q. Did you make any effort to loan any of the money?

A. Not much effort, because my understanding was that it might be settled at any time and I might be called upon to deliver the money, and it was kept in readiness.

Q. You could have loaned the money if you desired, couldn't you?

A. I don't know whether I could or not, on security that would have been acceptable.

Q. You loaned your own money, didn't you?

A. Some of it I did.

Q. What rate of interest did you get for your money?

A. From six, eight, and ten, and twelve per cent.

Q. Satisfactory security, of course?

A. Sometimes. Supposed to be if one takes it, but it is a risk.

Q. If you had thought it was your duty to loan this money and you had used the same diligence in connection with it that you used in connection with your own, isn't it true that you could have loaned every dollar of it on satisfactory security on ten per cent. interest?

A. I don't know.

Q. You know you didn't try?

A. I didn't try for the reason I have given you. I supposed I should be in readiness to turn it over.

Q. You put that bank stock down there at par and you sold it for 133, what has become of the difference?

A. That was sold after our report was made.

Q. What did you do with the money?

A. I think I have it.

Q. Where?

229 A. In the Bank of Commerce.

Q. I understand you to say in answer to a former question that you had in the Bank of Commerce \$8,835.00, and no more belonging to this estate?

A. I did not state I had no more there. I said that I had tried to keep that account in readiness.

Q. When you sold the stock at 133 and reported the stock at par, that made a difference of \$528.00, didn't it, between the amount of

money which should be in your possession and the amount shown by your report?

A. The stock was sold a good while after the report was made. I am responsible for all moneys received since that report. I have an account for that, for what was sold and have a credit.

Q. Did you keep books with this estate?

A. I have a little account.

Q. Where is it?

A. In my safe.

Q. Will you produce it?

A. I suppose I can.

Q. Did your wife keep any books with this estate?

A. She trusted to a clerk, Manuel Valdez.

Q. Did he keep books?

A. I don't know. I never found any. I never saw any of his books in reference to the affairs of this estate.

Q. Did you ever see any books kept by Manuel Valdez for your wife, purporting to contain entries with reference to this estate?

A. No, I have never seen any entries—that is, any account with the estate in his books.

Q. Where are the books?

A. I have them.

Q. Will you produce them?

230 A. I can.

Q. Take your first report, Dr. Harrison, and tell me where you got the item of \$2,071.71 in Exhibit "5"?

A. From the reports of the administrators of the estate of Jose L. Perea, Sr., on page 322, Book E.

Q. Read the item from the book.

A. Sheep, \$1,575.00; cash, \$496.71.

Q. That report of the administrators to which you refer shows that that amount of sheep and property came actually into the possession of Mrs. Guadalupe Perea de Harrison?

A. I don't know anything, except what is on the book.

Q. Take your last report, Exhibit "7," and show me where in that report you charge Mrs. Harrison with that item?

A. That item is not charged, for the reason that after consulting her, I firmly believed that those items were included in the notes made to the Pereas.

Q. Upon that subject you have no knowledge save such as you received from her?

A. And considering the way the records show, and papers.

Q. Then as I understand you, if that item of \$2,071.71 shown in Exhibit No. "5" is a proper charge against Mrs. Harrison, as guardian, she is not charged with that item anywhere in this report?

A. It is not in the report, because we did not believe that she received it. We believed it was included in the notes.

Q. Your second report, Exhibit "6," shows the same item, \$2,071.71, you say that second report was made without consultation with her?

231 A. With regard to that item; she told me to fix the report as best possible from what information I could get, and after

showing her that report, and all, she said she was positive that was included in the note.

Q. For that reason, and on that statement, you left it out of the last report?

A. Yes, sir; and according to the dates, &c., that was before December 10, 1884, the date the notes were made, and it was my understanding and firm belief that everything was included in those notes up to that date.

Q. Why was it in making report No. 6, you did not put any credits in it?

A. If it had been the custom of everybody in this country, especially the complainant—you refer to credits? It had been the custom to consider the interest on property, to consider that as going to the support of the ward. It had been the custom, but whether it was law or not I don't know—I don't believe now that it was law, but it was the custom, I had no previous experience in a case of this kind and did somewhat in that way, thinking it was proper, and it was customary.

Q. Do I understand that you thought you had to account for the original estate, and you had a right to apply the increase of the estate to the support of the minors?

A. That had been the custom and was what we expected to do.

Q. Did your wife, in her lifetime, keep any accounts with this child of the actual expenditures in his behalf, or are these items of credit, Exhibit "7," estimated accounts?

A. They are generally estimated accounts.

Q. You kept no accounts at all with the child for expenses?

A. No.

Q. What was paid out for his clothes and what was paid
232 for his board?

A. No. There was no account kept. Of course we did not expect then at any time to have trouble of this kind or expect to give any statement in regard to it.

Q. Did you keep accounts of your journey to Mexico and St. Louis?

A. Not an itemized account.

Q. Did you keep any account?

A. An account of money spent, knew what we had, what we took, and calculated amount of the expenses of the trip and living expenses.

Q. Did you keep any separate account of the amount expended for railroad fare, hotel bills and what is generally denominated as traveling expenses, from the amounts which you expended for purchases of supplies and other things and expenditures for the expenses of traveling and that sort of thing?

A. We kept, you might say, an account in this way. We knew what money we took and what we got after getting to the different places and we kept bills of what we bought in the way of clothing as a rule, especially for ourselves, and in that way we estimated what the traveling and living expenses were.

Q. Could you show us an account in which these various items are entered, Dr. Harrison?

A. I don't think I could, not account kept by us—only bills, etc.

Q. Did you pay railroad fare on any of these trips?

A. Yes, sir.

Q. All of them?

A. For my wife and the child. I have a pass over the Santa Fe, but not for my family.

Q. Did you have a pass over the Mexican road?

A. No, sir.

233 Q. You stated I believe on your examination yesterday, that the child was charged up with one-third of the expenditures on these trips.

A. No, sir. It is charged really with one-half, but I considered it was more than one-third. The child is charged in the report by half of the expenses of the trip, but I believe that in the trip to Mexico it was not more than one-third.

Q. It is denominated in the report as one-half, but you stated on your examination yesterday that actually it was charged with not more than one-third.

A. I don't believe it was more than one-third, and I say so now.

Q. How much did you expend on the trip to Mexico?

A. About \$2,000.

Q. Have you any recollection about that matter, or is that an estimate?

A. It is somewhat of a recollection, as to what money was taken, what was spent there, and taking what was spent for ourselves outside of the child.

Q. And what were the expenses of the trip to St. Louis?

A. You want everything, or just that part of the child?

Q. I want to find out how you arrived at this charge against the child.

A. I told you — arrived at it by calculating the traveling and living expenses and what was gotten for the child.

Q. What was gotten for the child, if you know?

A. A good deal of clothing. That would naturally go in the charge as made per month, and of course the only thing that I deducted from the expenses would be things that we got for
234 ourselves and calculated that was the amount of his traveling and living expenses, and medicines, etc., while in St. Louis and on the trip.

Q. As I understand, these are mere estimates; Doctor, you don't attempt to say that the amounts as charged in this report were actually spent on behalf of the child?

A. I think the estimate is a very low one. I think if I had kept an account it would have been more than this. It is my firm belief that this estimate is very moderate.

Q. In your estimate in the monthly charge against the child, for maintenance, you included expenses of medical attendance and medicine, didn't you?

A. Well, that was supposed to be ordinary living expenses at home or any ordinary medical attendance. Of course, our trip to St. Louis was to see a specialist, outside of ordinary medical attendance.

Q. This specialist did not make any charge, did he?

A. No, not any actual charge. He did it on my account and I think it would have been perfectly right for me to make a charge, as it was on my account, and the others the same way. Dr. Longwill was the only physician that made a charge.

Q. How much of that amount per month do you estimate for medical services?

A. I can hardly say that; really none.

Q. How much of it do you estimate for board?

A. I suppose the usual rate would be \$20.00 or \$25.00 per month. That is the usual rate, I believe, for board.

Q. For a child of that age?

A. There was no reduction made at any hotel we stopped at. They always charged the same as for any adult.

Q. How much do you estimate for clothing?

235 A. Well, I should think \$250.00 a year would be a very moderate estimate of the clothes of that child.

Q. Was there anything especial about that child's condition that he required different clothes?

A. Not especially, but his mother was very liberal. I did not object to it. I believe on the trip to St. Louis his clothes were \$280.00. That was supposed to go into the ordinary monthly charge.

Q. Do you know how much you pay per year for your own clothes?

A. I never kept any account.

Q. Do you pay \$250.00 per year for the clothes you wear?

A. I don't doubt it; anywhere from \$200.00 to \$250.00.

Q. And you think the same estimate would cover the clothes of a child between seven and eight years?

A. It depends on circumstances. I think that child's clothes cost more per year than mine do.

Q. What other items of expense go to make up this \$60.00 per month besides board and clothes, and medical attendance?

A. There was usually a nurse girl, or boy, that was supposed to attend him, that was hired for that purpose, partly as a playmate; there were no other children in the family, no playmate of his size or near his size, and there was always some one employed as a nurse for him.

Q. What was paid to the person employed?

A. I think an average of say \$7.00 to \$10.00 per month. If it was a girl, at times when he would have a sick spell, \$12.00 to \$15.00 per month. As a rule the boy would be paid \$7.00 to \$10.00 per month and the boy's board.

Q. But no account was kept of it?

236 A. No, sir.

Q. And you cannot tell for what length of time any nurse or servant was employed on account of the child?

A. Usually all of the time, one or the other.

G. W. HARRISON.

Taking of testimony herewith adjourned to April 18th, 1892.

MARIANO S. OTERO, being duly sworn, testifies as follows:

Q. State your name and place of residence.

A. M. S. Otero; residence, Albuquerque.

Q. Are you acquainted or related in any way with the plaintiff, Pedro Perea, and one of the defendants, G. W. Harrison?

A. Yes.

Q. How?

A. Pedro Perea is a first cousin of mine and a brother-in-law of mine; Dr. Harrison married a daughter of mine, he is my son-in-law.

Q. Your wife was an heir and distributee of the estate of Jose L. Perea, Sr.?

A. Yes.

Q. State the names of the heirs and distributees of that estate.

A. J. M. Perea, Josefa Perea de Castillo, Soledad, Filomena, my wife, Pedro, Mariano, Benecio, Beatrice, Jose L., Jr., Barbara, Jacobo and Cesaria, and the second wife was Jose and the other child, Julian.

Q. Then there were twelve children by the first marriage and two by the second?

A. Yes.

Q. The last two named being the children of the second wife?

A. Yes, Guadalupe Perea.

237 Q. State whether or not you received the share, the personality that was coming to your wife from the administrators of the estate and receipted for it.

A. I don't know whether I received the full amount; I received what they said was the full amount. I did not go into details, I didn't care to, but I did receive some and receipted for it.

Q. Whatever was paid you receipted for?

A. Yes, sir.

Q. Look at Book "E," page 334, receipt recorded purporting to be signed by you, and state what you know about a sum of \$1,420.82, Mexican dollars, in Chihuahua.

A. I am not sure whether we received that money in silver dollars of Mexican money; I am under the impression that we got an equivalent at the rate of twenty-five per cent. off. It is also stated in that same book.

Q. I see it is carried out, \$1,065.60; do you know how that was paid to you?

A. If I am not mistaken it was paid in American money, \$1,065.60.

Q. In money?

A. If I am not mistaken, I think I have the stub that I happened to lose there at the time, because they took the check book to my

house and gave me a check there in my office, and I am under the impression that it is a check on the First National bank for that amount.

Q. First National bank?

A. Of Santa Fé; I may be mistaken, but I am almost sure that is what I got.

Q. I see here receipt purporting to be signed by you on page 600, M. S. Otero for Guadalupe Perea de Harrison, which read: "Likewise received of the administrators of the estate of Jose L. Perea for the minors, Jose L. Perea, Second, and Julian Perea, according to the supplemental report of said administrators, stock in the First National Bank of Santa Fé, \$3,214.28, money of dividends of said bank, \$2,612.24." State whether any stock was turned over at that time, any stock certificates.

A. I don't remember that at all. If I did receive it, don't remember of having received anything for Mrs. Guadalupe Perea.

Q. How was the amount of \$2,612.24 of dividend paid, do you remember?

A. That dividend I understand represented what we called the surplus in the bank, that is dividends on stock of J. L. Perea, Sr., which had accumulated during his lifetime. That is what I understand. Whether it was one-half or the entire amount I cannot say.

Q. It was divided surplus?

A. Undivided surplus.

Q. Was that money paid in check, cash, or how?

A. The stock represented that much more undivided profits in the bank, or undivided surplus.

Q. How could that undivided surplus be turned over, or was it turned over? If it was undivided, wasn't it the property of the bank until divided?

A. I should look at it that way. I am under the impression that is what that represented at the time. We got no check for that that I can recollect.

Q. If it was undivided surplus in the bank, it would be the property of the bank and merely go to increase the value of the stock, wouldn't it?

A. It would.

Q. Were you present when settlement made on Dec. 11, 1886, and the property mentioned on page 602, Book E, and receipt recorded there, is turned over to Mrs. Guadalupe Perea. Look at this and see.

239 A. I don't remember anything at all about that property.

I know I signed her bond, and that is about all I can remember about that. I think it was received by Manuel Valdez. I am under the impression it was received by him. I don't think I ever held a dollar of it, or did anything with that part of it any than signing her bond. If I did, I don't recollect it now. Upon reflection I recall that I received some amount under direction of Dr. Harrison, while he and his wife were away, for which I must have receipted.

Q. What experience have you had in sheep-raising and marketing wool in New Mexico?

A. It has been my principal business since I got in business at all.

Q. Have you been acquainted with the hazards of that business for the past ten years?

A. Yes, sir.

Q. What would you say would be the average profit or return for sheep handled in New Mexico by letting them out on shares for the past ten or twelve years?

A. As far as I am concerned my flocks have decreased. I had, I think about twelve years ago, close onto 80,000 or 90,000 head of sheep, and I think I have been just about as careful as anybody else and tried to keep good care of them all the time, and I am today with about 45,000.

Q. Was that the result of losses in sheep?

A. Yes sir; losses in sheep that I had given out to people to take care of generally, and also in those that I have cared for myself. Within the last two years I have lost 2,000 out of those I herd myself.

Q. What were the losses due to?

A. Bad winters, scarcity of pasturage, one thing and another.

240 Q. Take the class of men who generally take sheep on shares—who can be had to take them on shares in New Mexico and state what security can be had by taking mortgages on property they may have? What is your experience and observation in that direction?

A. The security that you take from those people amounts to little or nothing, because when they get through and they come short and deliver 1,000 or 2,000, 1,500 or 500, or so many head less than the original number you gave them, then they come back to you and say they have thirteen children, or maybe not so many, but a large family, and no way of supporting it and you have to leave the security to them to live on. I can show you instances where these people have given their deeds and documents, and have paid nothing, a little land here and there that don't amount to anything; a man would not have it to take care of.

Q. Then, isn't it a fact that this class that have real estate and small amounts of personal property, and real estate so located that if sold for the purpose of releasing the security, it would be difficult to realize anything?

A. Yes, sir; I can show you in the last year—the last two years you might say—I had a man at Pena Blanca who turned over and was owing me, rating the sheep at \$1.00 per head, about \$2,400. He turned over his property and I could not sell it today. I would be willing to give it for \$400.00, or \$250.00, if anybody wants it. His name is Victoriano Lopez. A man in Bernalillo, by the name of Luciano Griego, who was owing me about \$1,600, counting the sheep at \$1.00 a head, and I could not make over \$100.00 if I was

to sell his house, furniture and everything he has. There is
 241 another one in Atrisco, by the name of L. Sanchez, that was
 owing me about \$7,000.00, at the same rate, and he is offering
 me 150 varas of land. What they are worth I cannot say. I could
 go along and give you from year to year that the same thing has
 been occurring with our sheep men.

Q. Have you been engaged in the banking business, or interested
 in it in any way for the last few years in New Mexico?

A. A little. I have had stock in several of the banks.

Q. Do you know whether people offering security such as property
 held by men who generally take sheep on shares could borrow any
 money with that as security from any banking institution in New
 Mexico?

A. I don't think they could borrow anything at all. If I was a
 bank director I would not advise lending any money. In some in-
 stances, of course, where a man has a piece of property near a big
 town, might be able to realize something, but the two first ones I
 mentioned you could not give to a bank. They would not let you
 inside the door with such security.

Q. Did you know the men who had sheep from Mrs. Perea de
 Harrison on shares at any time after her first husband's death, her-
 self or those two minors, Jose and Julian?

A. I know of one and I might know of others if their names
 were called to me. I know a man in Padilla by name of—I can't
 remember his name just now when you ask it.

Q. Did you know them as a general thing?

A. Yes, sir, I think I have known them all.

Q. How do they compare with the class of men who take sheep
 on shares?

A. One of them—that one I think of now, I don't think
 242 his security amounted to anything at all. I hardly think he
 has any property other than his little house there; I don't
 know of his having any land there at all.

Q. Do you know what experience she had in realizing on the
 sheep that the men had on shares from her?

A. No more than what I have heard, that he did not turn them
 over complete, that is all.

Q. Do you know anything about the sheep that belonged to the
 estate of Jose L. Perea, Second, that were out on shares, whether or
 not they collected them without trouble?

A. I think the sheep that I mentioned belonged to that estate. I
 don't know whether she segregated theirs from the children's or
 not.

Q. Did you understand from the administrators whether they had
 any difficulty in collecting sheep that belonged to the estate or
 not?

A. They must have had from the way they turned over some to
 us.

Q. How long did you live in Bernalillo, Mr. Otero?

A. I think I went to live there in 1867; I married in '66 and
 kept moving to Peralta and Bernalillo, and I think it was about '67
 19—113

I built my house. I may not have that date exactly, but it was about that.

Q. How do the expenses of living and maintaining a family, and raising children and taking care of them, in Bernalillo, compare with that elsewhere in the Territory?

A. I cannot tell exactly; to me it has been somewhat extravagant, but I suppose I have been extravagant everywhere I have been. It has been costly to me for I had to get them out as soon as they could wash their faces, I had to take them out to schools, and the young children, of course, I suppose it is about the same
243 all over the world, you do according to your means.

Q. Take a small family of four with some young children in it in Bernalillo, supposed to live in reasonable good style, about what would it take to support them, without any traveling expenses or going away from home?

A. You would have to give me a little time to figure that out.

Q. The question is generally.

A. Generally, if a man has got something back, he is pretty liberal with his children, and if not he has to confine himself to what he has. I consider that people out here — generally pretty liberal with their children, and it costs a little more to take care of them than back East.

Q. Take in consideration all the expenses of a family, would \$600.00 or \$700.00 per year be an unusual allowance for children?

Objected to as leading. Objection sustained.

A. I consider a man of reasonable means in Bernalillo that would not spend more than \$600.00 or \$700.00 on his children did not amount to much, carriages and horses and one thing and another we have been keeping, and one thing and another I consider my children costs me more than that.

Q. I will ask you to approximate, as well as you can without going into details, how much you think it would cost to maintain one of your children six or seven years of age, in Bernalillo, when you were living there?

A. My dear sir, six or eight years old, I have been keeping a horse all the time for children that got to be that age while they were in Bernalillo, and I should not think a horse ought to cost less than probably \$7.00 per month there. I think it costs
244 in cities about \$20.00. That alone would show the expenses. It could be done I think in \$500.00 or \$600.00, \$400.00 and \$600.00.

Cross-examination :

Q. Mr. Otero, is it your recollection that this \$1,065.00 in this receipt to you on page 334, the receipt which included that, was paid by check on that day?

A. I don't remember anything about it. I am under the impression there was given me a check for that amount. I cannot tell whether it was paid in silver, but I am under the impression it was a check on the First National bank. I had one of those big check

books. If I am not mistaken, it carried four checks and it happened to tear out the stub. I think I have seen that stub there afterwards. I don't know but it may be amongst my papers yet.

Q. First National Bank of Santa Fé?

A. Yes, sir. I may be mistaken about that.

Q. Is your recollection clear that that was not the sum of amount that had been paid out at different times, or was all paid at that time?

A. It was not all paid at that time. That amount was paid at that time. The others were given at different times; one was never given at all. For instance, that first item of \$9,120.38. I had signed a note for that entire amount to the estate. That amount was never delivered, but it was all right as I had signed that note and took it in that.

Q. And those amounts generally that are in that receipt, are the sum total of moneys received at other times and you receipted at once for all that had been previously gotten?

A. No, sir. We receipted for money we haven't gotten today. For instance, that Thos. Catron. We haven't got it today of —.

I can give you the full amount. We receipted for such interest in the T. Catron of \$2,371.78 which we haven't received today.

Q. It is true, as I understand, you did not receive on Dec. 11, 1886, the date that receipt appears dated, the various items of property and money contained in that receipt?

A. No, sir, we receipted for that and we counted as having an interest in several of those notes.

Q. And that \$1,420.28 which is extended as being \$1,065.60, was the sum of moneys received at different times from rents of this Chihuahua property?

A. No, sir; that was given to us, if I understand right, at one time, whether given in silver or given in U. S. money I am not clear to say.

Q. Don't you remember for that Mexican money, that checks were given on Bank of Mexicano in Chihuahua?

A. I don't remember anything about it. It may be so, but I don't remember.

Q. You say you know nothing about the turning over of the property embraced in this receipt of Mariano Perea and Pedro Perea and their giving their notes there, you know nothing about it?

A. I don't remember anything at all about it.

Q. It is your impression that this \$2,612.24, dividend of the Santa Fé bank, was not money in fact, but surplus in the bank to be credited to the heirs?

A. That is not the way I think it is. I think it was money accumulated on dividends during the life of Jose L. Perea, Sr. I don't remember of having received that amount at all.

Q. This amount was not turned over at that time?

A. I am under the impression that there was in the bank a deposit of money accumulated on said bank stock during the lifetime

of Jose L. Perea, Sr., at that time; I may be mistaken. I
246 know the bank did not declare any dividend to that amount;
at least I don't recollect anything about it.

Q. You acted for Mrs. Perea at her instance that day, did you not? By her authority?

A. I don't remember. It appears I receipted for her, but I did so at Dr. Harrison's request.

Q. You have been careful to act with full authority, or not act at all?

A. I suppose that I had authority. I had it from Dr. Harrison.

Q. And you try to see that you are not signing anything that would be doing her an injustice?

A. Of course.

Q. Your experience, Mr. Otero, as one who let out sheep on shares, was it peculiar or on par with the experience of other people in that business?

A. I notice that everybody is going back a little on sheep. If it had not been for the good luck we had in the last two or three years we would be just as sore as the cattlemen are today. That is my idea.

Q. Your flocks were formerly 80,000 to 90,000 head and fell to about 45,000 head? You let them out generally on a wool rental?

A. Yes, sir.

Q. And did not have any interest in the increase?

A. In some instances. No, I don't think at the time—yes, we have been varying, sometimes we had an interest. They used to give us 10 per cent. and times commenced to get harder and we took wool; generally we got about two pounds of wool for each sheep we let out. That has been the custom.

Q. And that decrease has been through a period of how many years?

A. For the last ten or twelve years.

Q. And generally, you say, it was wool rental?

247 A. Yes, sir.

Q. Do you know whether or not it was possible for Mrs. Perea to let the sheep of the minors out to any responsible person?

A. She might and she might not.

Q. Then, in about ten or twelve years your sheep from which you have been deriving an income of two pounds of wool per head, has decreased from 45 to 50 per cent.?

A. More than that. I had between 80,000 and 90,000 and I only have 45,000. I am not a very good mathematician. You can figure it out and make it 20, 50 or 60 per cent., whatever you wish. That is my answer, that I had between 80,000 and 90,000, and now I have 45,000.

Q. You say that if a child had horses, carriages and everything furnished it, that it would cost \$500.00 or \$600.00 per year to maintain it?

A. Yes, sir; I should think so.

Q. Suppose that he did not have those conveniences, what ought it to cost?

A. It depends on what conveniences he had. Just give me the conveniences you want him to have and I will figure out what it might cost.

Q. How much deduction would you make from that \$500.00 or \$600.00 for the conveniences you mention?

A. That is according to how you want him to live. Just tell me how you want him to live.

Q. What difference would it make in the living otherwise as to the cost of a horse and carriage? You say that if he has horses and carriages it ought to cost \$500.00 or \$600.00. Leave those out and what ought it to cost?

A. Figure the expense of a horse and carriage and you have it.

Q. How much ought that to be?

A. I don't know. I stated I thought a horse ought to cost about \$7.00 per month. If it cost \$20.00 here it ought to cost about \$7.00 in Bernalillo.

Q. Carriage how much?

A. Carriage and the men who take care of it and so on.

Q. What ought that to be?

A. I don't know what it would be.

Q. One hundred dollars?

A. It might and it might not.

Q. Fifty dollars?

A. It might and it might not.

Q. Twenty-five dollars?

A. It might and it might not.

Q. Do you remember how that amount of \$3,214.26 was arrived at in bank stock, the odd amount of \$14.26? Do you know how that was arrived at?

A. I had nothing to do with the division of the property. The man who divided the property could probably tell you that.

Q. Will you answer the question?

A. I said I don't know anything about it.

Q. In the receipt given by yourself on page 334, Book E, amount of stock in the First National Bank of Santa Fé, \$3,482.14, don't you know that the stock is an even \$100.00 per share in that bank?

A. Yes, sir.

Q. Didn't you get a certificate for \$3,500.00 in stock?

A. Yes; I did.

Q. Do you know how that fractional amount of a share was gotten at?

A. I don't remember now, but I suppose they made me pay for the difference.

Q. Do you know how that was gotten at, the \$82.14?

A. Common sense will teach that. They will make you pay the difference if you get \$3,500.00 and are only entitled to \$3,482.14. I don't remember if I paid it, but I think I did.

Q. Wasn't that fractional amount produced from the fact that the number of shares that the stock was divided into was not even?

A. I suppose so. I could not say what the amount of stock represented. I could not tell you. I don't know. I might by figuring.

Q. Wasn't it arrived at the same way of the children's interest?

A. I suppose it was.

Q. You knew it was right when you signed the receipt?

A. If I signed it I knew it was right.

Q. In the receipt also given by you, you see the last item of dividends of said bank, do you know whether the money was actually paid to you that day or not?

A. I cannot tell you anything about it. I don't recollect.

Q. You concluded it was right that day or you would not have given the receipt, didn't you?

A. I must have investigated it; I am always under the impression that was surplus in the bank that represented that amount; I may be mistaken; I suppose as we were entitled to that surplus we got it, and it represented money at the time; that is the way I look at it; if I had not got this paper I would not have known anything about it.

250 Q. Wasn't there a check delivered to you on the day you signed that receipt for Mrs. Guadalupe Perea, payable to the order of Mrs. Perea?

A. There might have been, I don't remember.

Q. Also to yourself, wasn't there one?

A. I don't remember that I ever signed the receipt, but I must have as I took a copy of it, but to my recollection I did not.

Q. It is your experience that when you let sheep out to people on shares, you would be unable to get the same sort of security that is demanded where money is loaned?

A. I don't think you could get the security for money on sheep; I never could, and I never saw any one that could either; to my knowledge I don't know any one. For instance, I give you sheep, you a lawyer, you could not get those lawyers to sign for you for sheep, and they probably would for money. One thing you must understand in giving out sheep, we pick out a man who knows how to herd them and that is all you know about it; you take chances on their honesty; you give sheep out to a man to herd who knows his business and take your chances. You could probably get better security, but they would not send any sheep to you because you don't know anything about it.

Q. You can select persons who would likely make good returns where sheep were let out to them?

A. Sometimes, but it has not been proven in the last ten or twelve years; I can show you my papers and satisfy you to that effect if you want to; I can bring them tomorrow.

Q. I haven't asked for them.

A. I have got about three or four out of fifteen, probably way up in good condition, and the others are just going one way or the other.

251 Q. Has that decrease in this original number of sheep you had been gradual or not?

A. It has been gradual from year to year.

Q. A fair average of loss year in and year out, is that true?

A. No, sir; our losses are generally in winter.

Q. Each year then, we will say?

A. Some years have been worse than others; for instance, I have not lost any big amounts myself until within the last two years; lost the first year, 6,000; and the other a little over 8,000.

Q. Is that decrease of this original number of sheep due only to losses, or from sales also?

A. Not from sales; not from sales I have made. There might have been sales the men had made; I don't know anything about that.

Q. By yourself?

A. No, sir; because I have only sold since the history of my sheep-raising in New Mexico, I have only sold 600 ewes that I can recollect.

Q. Ewes you mean. You never sold any except ewes?

A. No, sir; I have sold wethers.

Q. Were those wethers you sold in the original number of 80,000 or 90,000?

A. At the time I had that amount I might have had about 6,000 or 7,000 head of wethers.

Q. You excepted those from the number when you answered?

A. I said I had at that time between 80,000 and 90,000 head of sheep.

Q. That would bring you down from that number you have lost from between 75,000 and 80,000?

A. You can figure it out yourself. I had at the time as a general run. I might have had 5,000 or 6,000 head, but you can
252 make the deduction and figure it out.

Q. The only thing in my mind was whether you meant that 5,000 or 6,000 to be taken from the 80,000 or 90,000 you gave?

A. I did not say I gave 80,000 or 90,000.

Q. You gave out as having had them on shares?

A. I did not give out that many.

Q. This loss has occurred from sheep kept by yourself and those you have let out on rental?

A. Mostly on rental.

Q. Do I understand you, Mr. Otero, that you had sold these 6,000 or 7,000 wethers ten or twelve years ago, or that you have sold wethers between that time and this?

A. I have been selling wethers all the time.

Q. How many have you sold?

A. I cannot tell. I would have to figure it out. Some years 1,000, some years 2,000, 5,000. I think about twelve years ago I sold 5,000, if I am not mistaken; it must have been about that time, I sold a bunch to a party from the East, and sold 5,000 pretty good big wethers.

Q. Have you sold as many as 20,000 head?

A. I cannot say. I don't think so. But those wethers would come from the increase of those sheep of mine that I did not let out;

very little came from those I let out, because I had some let out that would give me little interest of the increase.

Q. What do you think that 80,000 or 90,000 head of sheep have brought you in in money in that ten or twelve years?

A. It has brought me to about 40,000 sheep less; about 35,000 or 40,000 less than I had then.

Q. No money?

A. Yes, they have brought me money.

253 Q. The question, as I understand it, is, whether or not as a whole, sheep have been a good investment. That is what you are here to testify, I believe. Has it been a good investment, notwithstanding the losses that have occurred, taking the wethers you have sold and the wool rental you have received?

A. A pretty fair investment, yes.

Q. Equal to how much money?

A. I would have done a good deal better if I had sold them at the time for a dollar apiece.

Q. You say it has been a fair investment?

A. No; I think it would have been better for me if I could have sold the sheep at the time for \$1.00 a head. I would have been better off today than I am. Of course, I had nothing else to do but to stay by it as long as possible.

Redirect examination

Q. As I understand you, you consider investment in sheep in New Mexico a safe or hazardous investment?

A. It is a very dangerous investment. It is profitable if it comes your way, but it is a very dangerous investment.

Q. In what kind of style did Mrs. Perea de Harrison live with her family in Bernalillo?

A. She lived as well as anybody else there.

Q. I see that on pages 604 and 604 what purports to be a final settlement and release of the estate of J. L. Perea, Sr. Did your wife have any notice of that, and if so was it presented in person or by attorney?

A. I don't remember anything at all about it.

Q. If you have any notice served on you, you would have known it?

A. Likely I should, but I cannot recollect if I had or not.

254 Recross-examination:

Q. Do you remember that you were personally notified by Mr. Pedro Perea that that application would be made?

A. What application?

Q. The one about which you have been asked.

A. I don't remember.

M. S. OTERO.

Taking of testimony adjourned until April 20, 1892.

NEZARIO GONZALES, being duly sworn, testifies as follows:

Q. State your name and place of residence.

A. Nezario Gonzales, La Cienega, Santa Fé county.

Q. Are you acquainted with Jesus M. Perea, Mariano Perea, Pedro Perea, administrators of the estate of Jose L. Perea, Sr.?

A. Yes, sir.

Q. And with Mrs. Guadalupe Perea de Harrison?

A. I also know her.

Q. State whether you are related to her in any way.

A. I am her uncle.

Q. Were you present in the month of December, A. D. 1884, when some notes were executed and delivered by the administrators of Jose L. Perea, Sr., to Mrs. Perea on account of her minor children—by any of the administrators?

A. Yes, I was present and represented Guadalupe Perea when those notes were made in her favor.

Q. On account of what were those notes delivered?

A. Because the administrators of Jose L. Perea had received the part that was coming to the half-brothers.

Q. Do I understand you to say that these notes were given because of the interest of share or part in the estate of those minors that had been turned over to Mrs. Perea for them, or not?

A. No, sir. I think those four notes were made for the property of \$30,059.56 was divided into four notes.

Q. Who had this property?

A. Pedro Perea and Mariano Perea, as I understand it.

Q. What part of that property represented by those notes, did Mrs. Perea ever have?

A. I understand she had received none.

Q. Then, as I understand you, these four notes were executed and delivered by Mariano and Pedro Perea in payment for the shares of these two minors in the estate of Jose L. Perea, Sr., and that the property was retained by them?

A. Yes, sir.

Q. Now are you able to state what property those notes were executed in payment for?

A. No, sir; I cannot say what particular property; I did not do anything else when Mariano Perea brought the books to me, in which books were the hijuelas of all the children of Jose L. Perea, Sr., and at the time of settling I did not see every item that the hijuelas contained; all that I did was to notice, and I did notice that all of the hijuelas were for the same sum, and then we divided the whole sum into four parts and four notes were made, each one containing the fourth part of the whole sum.

Q. You say you represented Mrs. Perea at that time?

A. Yes, sir.

Q. Was she herself present?

A. Yes, sir; at the time the notes were made she was present.

Q. Where were they made? In what house?

256 A. In the house of Guadalupe Perea.

Q. Were any other of the heirs and distributees there besides Mrs. Perea?

A. No, sir; but the minors were there.

Q. Was Mr. Pedro Perea there?

A. No, sir.

Q. Mariano Perea?

A. Yes, sir; Mariano Perea was present, and Mariano Perea is the one who settled with me.

Q. Do you know anything about his giving you at that time, or giving Mrs. Perea any sum in Mexican money, either in cash or by check?

A. I don't remember that there was a check.

Q. Did you see any money paid, Mexican dollars?

A. No, sir.

Q. You say you don't remember anything about a check?

A. No, sir.

Q. If a check for \$1,420.82 on bank in Chihuahua had been delivered to you or to Mrs. Perea at that time, who would have attended to the collection of that money on the check?

A. In that case it would have been me as I was representing her.

Q. She would have given you the check to have it collected?

A. No, sir.

Q. If she had taken a check at that time, would she, or would she not have given it to you to have it collected for her?

A. No, sir; I did not have any more business with other affairs of hers.

Q. You mean after that time you had no more business, paid no further attention to her business, after this settlement was made?

257 A. I did not attend to her business after that.

Q. Who did attend to her business after December, 1884?

A. I don't know.

Q. As I understand you then, you were present at this settlement in December, 1884, representing Mrs. Perea, but had nothing else to do with her business after that date?

A. After I made the settlement for her she did not employ or ask me to attend to any business for her.

Q. You say you don't remember seeing any check on a bank in Chihuahua turned over when that settlement was made?

A. No, sir, there was no check.

Q. Was anything said there about any Mexican money to be afterwards turned over to Mrs. Perea?

A. There was nothing said about it.

(Plaintiffs produce here original receipt of page 603, Book E, referred to on page 79 of plaintiffs' testimony.)

Q. State whether you ever saw that paper before?

A. No, sir, I have never seen it before.

Q. Do you remember anything about that paper?

A. I don't remember of ever having seen it before.

Q. But you know receipt was signed on that day, do you?

A. She gave receipts for the notes she received, the property that went into the notes.

Q. For what was the receipt given which she gave?

A. For the notes that contained the money.

Q. Would it say for four notes, or what?

A. No, sir, I did not read the receipt. The receipt was delivered to Mariano and he read it and put it in his pocket.

Q. How did you understand the receipt to read, just how it read, as near as you can give it?

258 A. I tell you I did not read it.

Q. Wasn't it read out so you could hear it?

A. I don't remember if it was read out so I could hear it, but it was satisfactory to Mariano Perea.

Q. Did you understand whether the receipt was given for the notes themselves, or whether given for the property that formed the consideration of the notes?

A. For the notes themselves and for the property that they contained.

Q. Do you remember to have seen this paper, Exhibit "A," on that date?

A. No, sir, I did not see any paper. Did not see anything. All that I saw was the sum that these people received.

Q. On what kind of paper did you see that, if on paper?

A. In a book which contained all the hijuelas of all the heirs.

Q. Who had the book?

A. Mariano Perea.

Q. What became of it?

A. Mariano Perea kept the book.

Q. Do you know anything about any property that had been delivered to Mrs. Perea before this date, December, 1884, on account of the minors?

A. I don't know anything about it.

Q. Were you ever present when any property was delivered or any settlement made other than this one in December, 1884?

A. No, sir.

Q. What, if anything, was said on this occasion about the property belonging to those minors?

A. There was nothing said.

259 Q. State what you know about 757 sheep having been received or turned over to Mrs. Guadalupe Perea on account of those minors in October, 1884?

A. I don't know anything about it.

Q. What property did you understand from the conversation which you heard between Mariano Perea and Mrs. Harrison, or yourself, was included in these four notes? In other words, for what property was the four notes given in settlement for what?

A. I understood it was for property, all of it, that had been received for those two minors up to that date.

Q. Received by whom?

A. By the administrators or by the heirs, or *vice versa*.

Q. You say by the administrators or by the heirs, what do you mean by that?

A. As the administrators were also heirs of Jose L. Perea and the ones to whom the property pertained were also heirs of Jose L. Perea, and as they at the time of the delivery made, as guardians—they delivered and received. They were the same ones who delivered and the same ones who received that property.

Q. I understand you to have said that two of the administrators, Mariano and Pedro Perea, gave those notes in payment or in settlement for property which they had received and which belonged to the minors and retained the property.

A. Yes, sir.

Q. Now, the question I ask you is, what part of the property which came into the hands of these administrators were those notes given for—all of it, or not, up to that time?

A. All the property that had been received up to that date went into the notes.

Q. You say you understand that. State fully how you understand it; from whom and how?

260 A. I don't understand what you want.

Q. I will explain. You state that you were present at the time these notes were delivered?

A. Yes, sir.

Q. Now you say you understand these notes were given in payment for all the property which had been delivered, set apart to these minors at that time?

A. Yes, sir.

Q. Did you understand that from what somebody said on that occasion?

A. I understood what I saw. I saw and understood that the book which was presented contained all of the hijuelas, and seeing that all contained an equal quantity, and the settlement we had was to divide the total into four notes.

Q. As I understand you the book contained the hijuelas?

A. Yes, sir.

Q. And the amounts shown by the hijuelas to be due, to these minors, then the total amount was divided into four sums and these four notes given to them?

A. Yes, sir.

Q. Do you know anything about the cost of living in the town of Bernalillo and supporting a family?

A. I haven't thought over that at all.

Q. You know something about the expenses of living in Santa Fe, don't you, in New Mexico generally?

A. I have never thought about that subject. I have always supported all my children in a ball, as it were, all together and never kept any account of it.

Q. From your experience of supporting families and bringing up children, what do you think as to the reasonableness of \$50.00 per month for the main support of a minor seven or eight years of age,

261 including everything, board and all kinds of expenses, medicines, clothing and maintaining the child in the way that Mrs. Perea maintained and supported this minor, Jose L., Second?

A. I would not like to answer that; I don't know.

Q. You mean you don't know, or don't want to answer the question?

A. I don't know anything about it.

Q. Were you present at the house, did you see how the child was maintained and supported?

A. That I did.

Q. Was the child supported in good style?

A. He was treated or tended to as finely as any child in New Mexico.

Q. What do you know about keeping horses for them to ride and take exercise on?

A. I know he had a horse.

Q. What was the condition of the child as to health?

A. His health was not very good.

Q. Was he strong?

A. His constitution was not strong.

Q. Do you know whether or not on this account he required more attention and expenditure in taking care of him than a strong child would have done?

A. Yes, it is natural.

Q. Naturally more expense?

A. Morse expense.

Q. Do you know anything about his mother taking him to old Mexico?

A. Yes, I know.

Q. Do you know why she went to old Mexico with him?

A. Looking for the health, attending to the health of the child.

Q. Was that stated at the time she took him?

A. His mother told me.

262 Q. At the time she went with him?

A. Just before she took him.

Q. Did you ever hear anything about his having been taken to St. Louis on account of the health of his eyes?

A. His mother told me she was going to take him to an oculist in St. Louis to have his eyes treated.

Q. Do you know how long she was gone when she went to old Mexico with the child?

A. I don't know the exact time, but I know they were in Mexico and went by water from Mexico to New Orleans, and from New Orleans back to New Mexico.

Q. You don't remember about how long they were gone—not exactly, but about?

A. No, I don't remember. I didn't hear.

Q. Do you remember how long they were gone to St. Louis to have the services of the oculist?

A. I don't remember.

Q. Do you know or have you had any experience in the sheep business, in having sheep herded for you, or in letting them out to other people?

A. Yes, sir, I know something about it.

Q. How many years have you known about that kind of business and what experience have you had?

A. The years that I have had experience are more than thirty. I have taken care of them myself. I have given them out on shares, and in all ways I have managed the sheep business.

Q. What is your opinion as to letting sheep out on shares, as to its being a hazardous business?

A. It is hazardous.

Q. What is your opinion as to the security you can get from people generally who take sheep on shares?

263 A. There are times when you can encounter a responsible man. When a man who has sheep to give out on shares encounters a man who is honest and responsible, it is good business, but when he encounters a man, which is the general case, that is not responsible, the owner has to content himself with what they say to him, but he never sees any more sheep—do not return the sheep. I have had both ways; I have had good men and it has been good business, and I have had others that I have lost even the principal.

Q. What is the general case about men who take sheep on the shares; are they honest and responsible or are they the other class?

A. The ones who fails; those who are no account are the majority.

Q. Do you know whether the sheep business has been profitable in New Mexico for the past two or three years?

A. No, it has not been profitable, speaking of my own experience.

Q. Taking it back for ten years, from 1882 to say 1887 and 1888, was it a profitable business then?

A. Always the business of the camps, or outside business, has been an advantageous business.

Cross-examination:

Q. Where were you living in 1884?

A. In the same place I live now, in La Cienega, Santa Fe county.

Q. How came you to be in Bernalillo at the time this settlement was made?

A. Because the interested party called me there.

Q. Mrs. Guadalupe Perea sent for you?

A. Yes, sir.

Q. You came down there then just to be present at this settlement?

264 A. No, sir; to take charge and make the settlement.

Q. Where did you go when you came to Bernalillo, whose house?

A. To the house of a sister of mine, and from there I came to the house of Guadalupe Perea.

Q. Did you go there alone or in company with Mariano Perea?

A. In the afternoon when I came to the house of Pedro Perea to see if I could settle the matter with those folks, and we could not come to any agreement. Next morning Mariano Perea himself, of his own accord, went to the house of Guadalupe Perea to settle.

Q. What kind of a book was that?

A. It is a large book in which they used to carry the partition, the hijuelas.

Q. It was in that book that you saw the several amounts that went to the different heirs?

A. Yes, sir.

Q. All made up to that date?

A. To that date. At that date in which I saw them they all had the same quantity.

Q. What was that quantity?

A. Each hijuela?

Q. Yes.

A. As I remember there were \$30,056.00 and some cents; I don't remember, I cannot find my memorandum.

Q. You gave the amount this morning did you not?

A. Yes.

Q. And the exact number of cents?

A. Yes, sir; the same that I gave this morning.

Q. Why is it you cannot give the amount exactly now?

A. All except the cents.

265 Q. Why cannot you give the exact cents now?

A. Because I don't remember how many there were. That is the reason I had a memorandum.

Q. You did testify from a memorandum this morning?

A. Yes, sir.

Q. When was that memorandum made?

A. Some time ago.

Q. Was it made on the very day of the settlement?

A. Yes, sir.

Q. You took down the amount on the memorandum that you read from this morning?

A. That same one, yes, sir.

Q. At that time?

A. Yes, sir. Here is the memorandum.

Q. Since you have found the memorandum, will you read the amount in dollars and cents from it?

A. Yes, sir. \$30,059.56.

Q. Will you let me see the memorandum?

A. Yes, sir.

Q. Was the amount for one of the heirs or both?

A. For the two.

Q. When Mariano Perea came to the house the next morning, then there was a settlement effected was there not?

A. Yes, sir.

Q. And you took part in the conversation between Don Mariano and Dona Guadalupe in which the settlement was made, did you not?

A. No, sir. Dona Guadalupe did not take any part in that settlement. I made it with Mariano Perea.

Q. In her presence the whole conversation was had was it not?

A. No, sir; the conversation we had in another room. At 266 the time of making the notes then we went to her room, but she did not know anything about the settlement.

Q. Were the notes drawn up in her presence or drawn up in your presence and afterwards carried to her.

A. In the presence of both. Then a writer came and we were first in a room that was very cold, and then I brought him to the room where she was and that was warm, and in her presence they were written.

Q. As soon as they were written what was done with them?

A. Mariano brought them so that Pedro Perea would sign them and Mariano Armijo and Jose L. Perea, because that was the settlement.

Q. Then as I understand you, the settlement was that the notes were to be signed by M. Perea, Pedro Perea, J. Armijo and Jose L. Perea?

A. Yes, sir.

Q. And he took the notes away to get all parties to sign them, and then brought them back?

A. He returned to deliver them to Dona Guadalupe.

Q. You were at the house when he returned with the notes?

A. Yes, sir.

Q. Did you see the notes when he brought them to the house for delivery?

A. I saw them before they were taken away for signatures. After the signatures I did not see them.

Q. They were handed to her in your presence, were they not?

A. Yes, sir.

Q. Was it stated then that they were signed by Mariano Perea, Pedro Perea, Armijo and Jose Perea?

A. Yes, sir.

267 Q. What rate of interest was it agreed that those notes should bear, if any?

A. I first asked them ten per cent., but Mariano asked me to consider a little more and she was sitting down behind Mariano, and when he asked me that, she made a sign with her fingers and said to agree only to eight per cent.

Q. To whom was that property sold for which those three notes were given, to what person or persons?

A. Pedro Perea and Mariano Perea.

Q. And J. Armijo and Jose Perea were to sign the notes with the two who bought the property?

A. As security on the note only.

Q. Were those notes brought back to the house the same day or some other day?

A. The same day.

Q. Did you look at the accounts between the other heirs to ascertain if the total received by each was the same as that given to each of these minors?

A. It was the same quantity that resulted in all the accounts, equally.

Q. And that was one-half the amount you read from the memorandum of \$30,059.56?

A. Yes, sir.

Q. Was the property for both of these minor heirs on one page of the book, and the footing up of both of them or on two pages?

A. I don't remember for certain, but the result was that each had the same quantity as each one of the others?

Q. And that is the reason you thought it was correct amount for these minor children?

A. Yes, because all had the same amount, all had equal rights.

Q. Was the trade fully completed before Don Mariano went
268 off to get those other parties' signatures, that is, as to the amount and interest?

A. Yes, sir, and the notes made out and he brought them up signed after they were made.

Q. Did you hear anything said at the time about any Mexican money?

A. Nothing.

Q. Don't you remember that Mrs. Perea said that she would make the trade as to all the property except the Mexican money, but she did not desire to let them have that because she could do better than that?

A. She didn't tell me anything, nor did she take any part in the settlement. Mariano and me alone made it.

Q. The only thing then, as I understand you, that she said or did was to give you a sign that she would agree to eight per cent. in the note, and she took no other part in the settlement at all?

A. Yes, to take eight per cent.

Q. That was all she said or did?

A. That is all.

Q. You are certain that amount was \$30,059.56, and not \$30,059.59½, are you?

A. It was spoken about the half. The half was there.

Q. Was it 56½ or 59½ cents?

A. Fifty-six and one-half.

Q. And you took that from the amount on the book at the time, did you?

A. Yes, sir.

Q. Now, if you can't remember whether or not the account of these two heirs was on one page or on two different pages, how are you able to say that you copied the figures \$30,056.00 from some one page in the book?

269 A. Very well, because both were together. There was no more quantity than what was assigned there; I don't remember whether both quantities were together or what, but I do

remember that both quantities gave this amount, and as we had faith in each other we thought everything was all right.

Q. You know that this \$30,059.56 was at the bottom of a column of figures as representing what the column of figures added up and made?

A. Yes, sir; equally it was in all the hijuelas.

(Memorandum identified and marked Exhibit "L 1.")

Q. You did not know anything about the estate and what interest these minors had in it, except as you learned that day, did you?

A. I did not know anything before.

Q. And you have never had anything to do with the matter since that time, have you?

A. No, sir; since the notes were finished and I got through with what business I had with her.

Q. And Mrs. Perea opened the notes and looked at them in your presence did she?

A. Yes, when she received them she looked at them, and she went and put them away.

Q. And she was present when it was agreed that they should be signed by Mariano Perea, Pedro, Armijo and Jose Perea, and fully understood they were to be so signed?

A. No, sir; I and Mariano were alone; Guadalupe was not there.

Q. Didn't you tell her that the notes were to be signed by the four parties I have named?

A. After we made the agreement I told her, we had agreed on such a thing, and then she told me you are authorized to do whatever you want to. I was the one who told him they should
270 be signed by those names.

Q. She knew the notes were to be signed by those four parties before they were brought to her?

A. Yes, sir.

Q. And you did not even look at the notes to see if they were made out to the proper amount or signed by the parties who had agreed to sign them?

A. When they were made and I liked them.

Q. That is you saw the parties' names signed, or saw them after the names were signed to them?

A. I did not see them signed; I said before that Mariano Perea brought them so that Pedro and the others would sign them.

Q. You did not see the notes after they were signed did you?

A. I did not read them afterwards, but I saw they were delivered in the hands of Dona Guadalupe Perea.

Q. You say that they called in a writer when it was agreed that the notes should be made, who was that writer?

A. I think it was Manuel Valdez, or Mariano himself.

Q. Was Manuel Valdez there at the time the settlement was being made or the notes being drawn?

A. When the notes were drawn he was there; when we made the settlement, I and Mariano made it alone.

Q. He came in just about the time it was agreed the notes should be drawn, is that so?

A. Yes, sir.

Q. Did he have a blank form of a note there, or simply write the note out in full?

A. There were blank forms there, and they filled them out.

271 Q. Were they brought there by Mariano or furnished by Guadalupe?

A. Mariano.

Q. You say that this child was not a very healthy child?

A. He was not. He used to get sick very often.

Q. You say you had some conversation with Dona Guadalupe just before she took the trip to Mexico with the child, do you not?

A. I had a conversation when she was starting for Mexico and I had a conversation with her again after she came back from Mexico.

Q. Where did these conversations occur?

A. In her house in Bernalillo.

Q. You were living in Santa Fé, where you now live, at that time, were you not?

A. Yes, sir.

Q. What was the occasion of your being in Bernalillo at that time?

A. Because I came there often. I was born and raised there and my sisters live there, and I visit them very often.

Q. How long a time was she gone on that trip to Mexico?

A. I don't remember; I don't know.

Q. Which trip was taken first, the one to St. Louis or the one to Mexico?

A. I don't remember. I know she made two trips, but I don't know which was first.

Q. Or whether it was winter or summer, or spring or fall, that either was taken?

A. I don't remember.

Q. Do you know who went on that trip with the child?

272 A. I don't know if there was any one besides Guadalupe, the doctor and the child. I was not in Bernalillo when they started.

Q. What was the matter with the child's eyes, if you know?

A. I don't know what was the matter with him. He was a little sick, and he put his hands up to his eyes when he came out to the light.

Q. You say you are unable to state how much it would cost to take care of a child, of that child, per month?

A. I don't know.

Q. And he had a horse, you say, a pony?

A. Yes, a pony.

Q. Do you know where he got that pony?

A. No, sir.

Q. Did you ever see the child using the pony?

A. I saw him once when a serving man had hold of the reins and the child was on top. That is the only time that I saw him.

Q. The man was leading the pony?

A. Yes, by the reins.

Q. And the child did not ride the pony alone?

A. I never saw him alone. That is the only time I ever saw him on the colt.

Redirect examination:

Q. Who did you say was to sign these notes?

A. I asked Mariano Perea for the names of Mr. Otero, Armijo, besides the names of Mariano himself and Pedro Perea, and then Mariano answered me and said, "Look here, Mr. Gonzales, I want you to do me a favor. Don't say anything about Mr. Otero to me," and then I told Mariano in that case Armijo and Jose Perea would sign.

Q. What Armijo?

A. Justo.

273 Q. Were they all to sign each note, or some of the securities to sign some notes and the others other notes?

A. All were to sign all the notes.

Q. You say you never saw the other notes after they were signed?

A. No, sir.

Q. You do not know, then, whether they were actually signed by Justo Armijo and Jose L. Perea or not?

A. I did not see them, as I said before, after they were signed, but Guadalupe knew that every note should come with four signatures, and when she received them and looked at them, I think she was satisfied, as she knew they were to be signed by those four people, and if she had missed any signature she would have said so. I believe if there had been a name missing she would have spoken to me about it.

Q. Was anything said at the time the notes were delivered to her?

A. There was nothing said, except she said they were given.

Q. Whenever you have mentioned Armijo in connection with these notes, you have meant Justo Armijo, have you not?

A. Yes, sir.

Taking of testimony adjourned until further notice.

A. Z. C.

On the 11th day of May, A. D. 1892, the master sent the following notice to W. B. Childers, Esq., solicitor for respondents:

ALBUQUERQUE, N. M., May 11th, 1892.

District Court, Bernalillo County.

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PEDRO PEREA, Adm'r, }
vs. } No. 2943.
 G. W. HARRISON *et al.* }

To W. B. Childers, Esq., solicitor for def't., city.

DEAR SIR: At the request of complainant's solicitor, I hereby notify you that I shall proceed to take the testimony in the above-entitled cause on Monday, May 16th, 1892, at 10 o'clock a. m., at my office, in the Commercial Club building, Albuquerque, N. M., at which time and place all parties interested are required to be present.

Yours,

KARL A. SNYDER,
Special Master.

On Monday, May 16th, 1892, Messrs. Childers, Collier and Pedro Perea appeared in response to said notice, and the solicitors for the respective parties agreed that the respondent should commence taking testimony on or before June 15th, 1892, without fail, and that if testimony were to be taken before said 15th day of June, the defendant- should give the complainant due notice.

On June 15th, 1892, the complainant appeared with Messrs. Collier and Field, his solicitors, and the respondent not being represented, word was sent to his office that the complainant was ready to proceed; whereupon, Mr. E. W. Dobson appeared and stated that Mr. Childers was unavoidably detained in Socorro. The complainant's solicitor then volunteered to wire him to be present on the 16th instant to proceed with the case; and the taking of testimony was postponed until June 16th, 1892, at 10 o'clock

275 a. m., and Mr. Dobson agreed to notify the respondent.

On June 16th, 1892, at 10 o'clock, a. m., the complainant again appeared with his solicitors, Messrs. Field and Collier, and the respondent not being present or represented by counsel, the solicitors for complainant insisted that the taking of testimony should proceed in accordance with the agreement of May 16th, and it was so ordered.

And the defendant offering no further evidence in support of the issues in his behalf, the master, on motion of the solicitors for the complainant, declares the taking of testimony on behalf of defendant to be closed; and thereupon, the complainant called as a witness in rebuttal, PEDRO PEREA, who testified as follows:

By Mr. COLLIER:

Q. You heard the testimony of Necarrio Gonzales, did you not?

A. Yes.

Q. Have you the book in your possession referred to by him, viz: the book in which the statement of the shares of the several heirs was kept?

A. Yes.

Q. Well turn to the page showing the interest of the two minor heirs, Jose L. Perea, Second, and Julian Perea?

A. The hijuela of Jose L. Perea, Second, is on page 62, and of Julian on page 63.

Q. How do you know that to be the book in which the hijuelas of the heirs were shown?

A. Because I have always kept it in my possession from that time to this, and this is the only book in which we kept them.

Q. From what time to this?

A. From the time in which we began managing the estate of Jose L. Perea, as administrators.

276 Q. On what pages are the hijuelas of the other heirs shown?

A. Jesus M. Perea, page 50; Josefa, page 51; Soledad, 52; Filomena, 53; Mariano, 54; Pedro, 55; Benecio F., 56; Beatriz, 57; Jose L., 58; Cesaria, 59; Jacobo, 60; Barbara, 61.

(Defendant now offers in evidence pages 50 to 63 of book referred to by witness, inclusive. Book marked Complainants' Exhibit "14.")

Q. State whether or not, if you know, the settlement was that the amount which you gave notes for, was arrived at.

(Question withdrawn.)

Q. Take the original receipt already in evidence, showing the items of the hijuela of Jose L. Segundo, and compare it with page 62 of the book of hijuelas and explain the difference.

A. The first item of cash is the same. The second item in the book reading money and debts, \$7,657.29, that is not in the receipt because we did not deliver the evidences of debt at that time, but retained them for the purpose of collection. The third item in the book is ewes, and is the same amount as in the receipt. The fourth item is large wethers, 243, and is the same. The fifth item in the book, which is the fourth in the receipt, is not the same. In the book it reads 335 yearlings wethers at 75 cents, \$250.25. In the receipt it reads 423 yearlings wethers at 75 cents, \$316.25. After the item in the book of 335 yearling wethers was entered, we all received 88 yearling wethers additional before Mrs. Perea gave that receipt, therefore she was charged with 88 wethers additional; and in figuring up the items, I see that we made a mistake of \$1.00 in the book; and that mistake was also carried in the receipt;

277 that is, 335 yearling wethers at 75 cents is \$251.25, and we have it in the book only \$250.25. And in 423 wethers at 75 cents is \$317.25, and in the receipt it showed only \$316.25. This mistake goes through all the accounts and all the hijuelas, and was only discovered by me since I testified in this case before, and the sixth item in the book, which is the fifth in the receipt, are the same. The next in each is the same, and so is the next; so is the next. They are all the same down to the item 18 in the book and 17 in the receipt, both numbers inclusive. Items 19, 20, 21 and 22 in the book are not in the receipt, and item 18 in the receipt is not in the book. The last four items in the book are not in the receipt

because we had not delivered them at that time; but subsequent to the receipt an agreement was entered into which has already been explained in my testimony-in-chief. The 18th item in the receipt is 818 bearing ewes at \$1.00, \$818.00. Those 818 sheep were the share of Jose L. Segundo, of sheep received from partiderios subsequent to the first report made by the administrators to the probate court, and the 88 wethers of which I have spoken about were received in the same way.

Q. Look at the paper I hand you and state what it is, and how and when it came into your possession?

A. It is check No. 11, of the administrators of Jose L. Perea on the Banco Mexicano of Chihuahua, in favor of Mariano Perea, given on the 27th day of January, 1885, for \$2,841.64, which was the item Dinero in Chihuahua, shown on pages 62 and 63 of the book of hijuelas, and was \$1,420.82 each for Jose, Segundo, and Julian.

Q. State in whose handwriting endorsements on that check are?

A. It was endorsed on the back by Mariano Perea in favor of Guadalupe Perea and the endorsement is in the handwriting of Mariano Perea, and it was afterwards endorsed by Guadalupe Perea payable to Felix Francisco Maceyra, and the signature to the latter endorsement is the handwriting of Guadalupe Perea. I received this check on the 21st of May, 1892. It was sent to me by Miguel Salas, president of the Banco Mexicano, enclosed in a letter from him to me dated May 19, 1892.

(Check offered in evidence by complainant-, marked Complainants' Exhibit 15.)

WITNESS: That check is in the same condition it was when I received it.

PEDRO PEREA.

Whereupon the solicitors for complainant-announced that the taking of testimony in their behalf is closed.

(Endorsed:) No. 2943. In district court, Bernalillo county. Pedro Perea, administrator, vs. Geo. W. Harrison *et al.* Report of special master. Filed in my office February 14, 1893. Chas. F. Hunt. Karl A. Snyder, special master.

Complainants' exhibits as marked by the master and filed in the office of the clerk are in the words and figures as follows, to wit:

COMPLAINANTS' EXHIBIT "1."

BERNALILLO, N. M., Jan. 21, '86.

Messrs. Jesus M. Perea, Mariano Perea, and Pedro Perea, administrators of the estate of the deceased Jose Leandro Perea:

In reply to your note of yesterday to my wife have to say we are willing that all errors should be corrected, as we feel confident that if any errors should be made by you on the other side that they would also be corrected.

If you paid my wife, Guadalupe Harrison, *née* Perea,

\$492.31 in Mexican dollars of rents of Chihuahua, that belonged to Cesaria and Barbara, if the deceased kept the accounts that way, you can deduct from the income of this year that amount. If income is not sufficient notify me and I will make it good.

In future please direct your notes to me instead of to my wife. I am the one who attends to the business, not her.

G. W. HARRISON.

(Marked or endorsed by master:)

Ex. "1," No. 2943. A. Z. C.

(Endorsed.)

COMPLAINANTS' EXHIBIT "2."

No. 45.

BERNALILLO, N. M., *March 6th, 1885.*

The First National Bank of Santa Fé, N. M., pay to order of Guadalupe Perea two hundred and sixteen $\frac{98}{100}$ dollars.

\$216.98.

J. M. PEREA,
MARIANO PEREA,
PEDRO PEREA,

Administrators Estate of Jose L. Perea, Deceased.

New Mexico (across end of the check).

(Endorsed on back of check:)

Guadalupe Perea.

(Endorsed on face of exhibit:)

First National bank. Paid April 3, 1885. Santa Fé, N. M.

(Marked or endorsed:)

No. 2943. Ex. 2. A. Z. C.

(Endorsed:) Filed in my office January 26, 1893. Chas. F. Hunt, clerk.

280 No. —.

SANTA FÉ, *Jan. 31st, 1887.*

The First National Bank of Santa Fé, New Mexico.

Pay to the order of Mrs. G. W. Harrison, or order, twenty-eight hundred and fifty-eight $\frac{75}{100}$ dollars.

\$2,858.65.

PEDRO PEREA.

New Mexico (across end of exhibit).

(Endorsed on back of exhibit:)

G. W. Harrison, for Mrs. G. W. Harrison.

(Endorsed on face of exhibit:)

First National bank, paid March 4, 1887, Santa Fé, N. M.

(Marked or endorsed:)

2943. Ex. 3. A. Z. C.

(Endorsed:) Filed in my office January 26, 1893. Chas. F. Hunt, clerk.

COMPLAINANTS' EXHIBIT "4."

George Wm. Harrison, M. D., office practice only.

BERNALILLO, N. M., Dec. 17th, 1889.

N. C. Collier, Esq., Albuquerque, N. M.

MY DEAR SIR: In answer to yours of the 16th, my wife never had possession of any of the effects of the estate of Jose L. Perea, Second, as administratrix, but as the guardian, and by Pedro Perea's action, &c., the matter of the settlement of her guardianship is in the district court and Pedro Perea will have to wait a good while before he gets possession of any of said estate and he will
281 probably learn who (— —) he is fooling with before he get- through with me.

Very truly yours,

G. W. HARRISON.

(Marked or endorsed:)

No. 2943. Ex. "4." A. Z. C. Filed in my office Jan. 26, 1893.
Chas. F. Hunt, clerk.

COMPLAINANTS' EXHIBIT "5."

Report on Property of J. L. Perea, Second, Minor.

To the Hon. J. R. Armijo, probate judge of and for Bernalillo county, Territory of New Mexico:

Your petitioner, G. W. Harrison, for Guadalupe Harrison, guardian of above-named minor, begs leave to make the following report to your honor:

Guadalupe Perea, now Guadalupe Harrison, was appointed guardian of J. L. Perea, Second, July 23rd, 1884.

She received for him — to the amount of	\$15,586 38
She received afterwards for minor	2,071 71
She received in October, 1885, sheep	345 00
Total	<u>\$18,003 09</u>

All the above still exists and is in safe place and condition; the interest well pays all expenses of said minor.

G. W. HARRISON,
For GUADALUPE HARRISON, *Guardian.*

(Marked or endorsed:)

2943. Ex. "5." A. Z. C. Reports of Guadalupe Perea, guardian of J. L. Perea, Second. Approved July 6th, 1886. J. R. Armijo, probate judge. Filed in my office January 26, 1893.
282 Chas. F. Hunt, clerk.

COMPLAINANTS' EXHIBIT "6."

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the Probate Court.

In the Guardianship of JOSE L. PEREA, SECOND.

*Final Report of Guadalupe Harrison, Guardian of Jose L. Perea,
 Second, Minor, Now Deceased.*

To the Honorable Jesus M. Chavez, judge of probate court:

Your petitioner, Guadalupe Harrison, respectfully represents that on the 23d day of July, A. D. 1884, letters of guardianship were issued to her by this court, and that such letters have not been revoked, and that the following is a list of money, negotiable paper, property, and other assets of estate of said Jose L. Perea, Second, received by your petitioner as guardian of said minor:

1. 2 promissory notes for the sum of \$7,515.75 each	\$15,027 75
2. Sheep and money	2,071 71
3. Cash	128 22
4. Sheep	577 00
5. Outstanding debts	4,468 26
6. Bank stocks (First National Bank of Santa Fé)	1,607 14
7. Cash	1,208 12
Total	\$25,190 20

Your petitioner further reports that there is some eight thousand pounds of wool belonging to the estate of said minor, but 283 the same has not been delivered to your petitioner, and she cannot, therefore, turn the same over, but is ever ready and willing to do — as soon as the same has been delivered to her as guardian of said minor.

Your petitioner further reports that there is also some stock in the Bernalillo Bridge Company, amounting to the sum of \$71.42.

GUADALUPE HARRISON,
 By G. W. HARRISON.

(Marked and endorsed:)

No. 2943. Ex. "6." A. Z. C. Final report of guard. of J. L. P., Second. Filed in my office the 7th day of November, A. D. 1887. F. H. Kent. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

COMPLAINANTS' EXHIBIT "7."

Final Report of Guadalupe Perea de Harrison, Guardian of Estate of Jose L. Perea, Second.

Guadalupe Perea de Harrison, guardian as aforesaid, to amount of money, property, et cetera, received on account of said ward, Dr.

June 10th, 1885 :

To one-half of note and interest thereon of Pedro Perea and others for interest of Julian and Jose L. Perea, Second, in estate of Jose L. Perea, deceased, which was received June 10th, 1885	\$3,907 73
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Dec. 10th, 1885 :

To one-half of note and interest thereon of Pedro Perea and others, for interest of same heirs in said estate, received Dec. 10th, 1885.....	4,058 02
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June 10th, 1886 :

To one-half of note and interest of Pedro Perea and others, for interest of same heirs in said estate, received June 10th, 1886.....	4,208 32
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Dec. 10th, 1887 :

To one-half of said note and interest thereon of Pedro Perea and others, for interest of same heirs in said estate	4,794 47
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Jan. 27th, 1885 :

Cash in Chihuahua, Mexican money, \$30.57, worth in American money 75 cents on the dollar.....	22 02
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Dec. 11th, 1886 :

Cash received from the administrators of Jose L. Perea .	128 22
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Dec. 11th, 1886 :

Cash received from same on account of dividend on stock in First National Bank of Santa Fé.....	1,308 12
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Jan. 30th, 1887 :

Cash received from W. T. Thornton on account of indebtedness turned over to him by administrators of Jose L. Perea, deceased.....	336 38
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Items of property not in cash received on account of said ward.

Dec. 11th, 1886 :

Received of "administrators" of Jose L. Perea, deceased, a list of interests in indebtedness due to the estate of Jose L. Perea, deceased, less the sum of \$336.38, paid by W. T. Thornton, as above charged, (that being the whole amount ever received on account of said indebtedness)	131 88
--	--------

Dec. 11th, 1886 :	
Received of same, bank stock, in the First National Bank of Santa Fé, of the value of	1,600 00
Dec. 11th, 1886 :	
Stock in the Bernalillo Bridge Company of the par value of	71 42
Jan. 27th, 1885 :	
Sheep from estate of Jose L. Perea, deceased	148 00
Dec. 11th, 1886 :	
Sheep from the estate of Jose L. Perea, deceased	577 00
Interest in Manuel Gonzales' vineyard, as per statement of "administrators" of the estate of Jose L. Perea, deceased	189 55
Feb. 1st, 1887 :	
Received as dividends of bank stock, ten per cent.	160 00
Aug. 1st, 1887 :	
Received as dividends on bank stock, ten per cent.	160 00
Feb. 1st, 1888 :	
Received dividends on bank stock, nine per cent. ...	144 00
Feb. 22nd, 1886 :	
Received as dividends on bridge stock, twelve per cent. ...	8 57
Dec. 21st, 1887 :	
Received as dividends on bridge stock, since Feb. 22nd, 1886, thirty per cent.	21 42
Jan. 27th, 1885 :	
286 Rents collected from real estate in Chihuahua, \$156.68, worth 75 cents on the dollar.	117 51
Jan. 30th, 1887 :	
Rents from real estate in Santa Fé.	6 86
Aug. 25th, 1887 :	
To four per cent. received from bank on cash deposited from time of its reception to death of ward, to wit, on \$18,404.98	846 47
	<hr/>
	\$26,577 44

CREDITS.

Guadalupe P. Harrison, as guardian of said ward, credits herself with the following items, to wit:

By amount of list of indebtedness turned over as above charged, and still uncollected in the hands of said guardian	4,131 88
By interest in Manuel Gonzales' vineyard, as above charged	189 55
By amount expended in necessary improvements on real estate of ward, as shown by itemized statement hereto attached, marked Exhibit "A"	556 00
By amount expended and cost of support and maintenance of ward from April 2, 1883, to August 25, 1887, less \$500.00 paid on this account by administrators..	2,650 00

Jan. and Feb., 1886:

By one-half of expenses in trip to Mexico on account of health of ward	500 00
--	--------

Nov. 29 to Dec. 31, 1886:

By one-half of expenses in trip to St. Louis for purpose of medical treatment of ward and medical treatment.	450 00
By amount of taxes paid for ward for the year 1885	205 50
By amount of taxes paid for ward for the year 1885	205 50
By amount of taxes paid for ward for year 1886	212 48
By amount of taxes paid for ward for year 1887	206 44
By additional tax paid for ward in year 1887	67 38

Aug. 28, 1884:

By cash paid for repairs on mill property in Bernalillo.	40 00
By amount of labor and expenses in work done on Bernalillo bridge for ward	
By amount of money refunded to administrators on account of rents which they claimed to have received from Chihuahua property and turned over to her by mistake	67 60

To amount of funeral expenses and of last sickness of said ward, as follows:

By amount paid Dr. Longwill for services	125 00
Expenses paid Dr. Wroth in trip to Bernalillo	10 00
Funeral expenses, undertaker's bill, et cetera	120 00
Priest's services as per bill	225 00

\$9,306 83

Balance in hands of guardian..... \$17,670 61

From information and according to best belief of guardian, there is still considerable property belonging to the estate of this ward which guardian has not received.

Remarks.

288 Said guardian still has in her hands the list of indebtedness above set forth, the stock in the First National Bank of Santa Fé, and stock in the Bernalillo Bridge Company above mentioned, and hereby offers to account for the same in specie and asks for a final settlement of said estate, and for her discharge as such guardian.

GUADALUPE P. HARRISON.

TERRITORY OF NEW MEXICO, {
County of Bernalillo. }

Guadalupe Perea de Harrison, being duly sworn, on oath deposes and says, that the foregoing statement of her accounts as guardian of Jose L. Perea, Second, is true and correct to the best of her knowledge, information and belief.

Sworn to and subscribed before me this 5th day of March, A. D. 1888.

[SEAL.]

HERMAN BLOCK,
Notary Public.

COMPLAINANTS' EXHIBIT No. "7" CONTINUED.

EXHIBIT "A."

To 28 days' scraping, one man and extra team at \$2.50...	\$70 00
Cutting out cottonwood trees and stumps...	25 00
Eight men two weeks leveling up land.....	96 00
Alfalfa seed.....	12 00
Sowing the same.....	8 00
Making acequia and water boxes, et cetera.....	190 00
Fence posts, over 500.....	50 00
Wire for fence.....	109 00
Lumber for fence.....	41 00
Gate, extra good, etc.....	15 00
Making fence.....	25 00
25 pounds of staples for fence.....	2 50
289 Nails for fence.....	2 50
Total.....	\$556 00

(Marked and endorsed:)

No. 2943, Exhibit "7," A. Z. C. Final report of Guadalupe Perea de Harrison, guardian of Jose L. Perea, Second. Filed in my office this 6th day of March, 1888. F. H. Kent, clerk, by J. A. Sommers, deputy. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

COMPLAINANTS' EXHIBIT "8."

TERRITORY OF NEW MEXICO, {
County of Bernalillo. }

In the Probate Court — and for said County.

In re GUADALUPE PEREA DE HARRISON, Guardian of Jose L. Perea.

Now comes Pedro Perea and objects to the approval of the final report of said Guadalupe Perea de Harrison and to her discharge as guardian of said minor, Jose L. Perea, Second, for the reason that the same is incorrect and insufficient in the following particulars, to wit:

The said guardian in the said report fails to charge herself with the following items, which are legally chargeable, to wit:

Jan. 27th, 1885:

Mexican silver dollars in Chihuahua received by her from administrators.....	\$1,420 82
--	------------

290 Oct., 1884:

Seven hundred and fifty-seven sheep received by her from administrators.....	757 00
--	--------

1884:

Texas, Santa Fe & Northern Railroad, 1884, stocks and bonds to amount of:.....	303 57
--	--------

March 16th, 1885:

To money received by her from administrators.....	496 71
---	--------

March 6th, 1885:

To money received by her from administrators.....	108 47
---	--------

Jan. 30th, 1887:

To remainder received of W. T. Thornton.....	117 79
--	--------

Dec. 12th, 1886:

To remainder of bank stock, First National Bank of Santa Fé.....	7 14
--	------

Jan. 30th, 1887:

To remainder of Santa Fé rents.....	47 49
-------------------------------------	-------

March, 1887:

To rents of property in Chihuahua.....	173 60
--	--------

April 9th, 1885:

Money received account Bernalillo mill.....	10 49
---	-------

Crops received during her guardianship and various items, including interest upon sheep and money not sufficiently charged in

said account. The said guardian in and by said report improperly credits herself with large amounts.

WARREN & FERGUSON.

(Marked and endorsed :)

In the probate court, county of Bernalillo. *In re* Guadalupe P. Harrison, guardian of Jose L. Perea, Second. Objections to guardian's final report. Filed in my office this 12th day of March, 1888. (Seal.) F. H. Kent, clerk, by J. A. Sommers, deputy. No. 2943. Exhibit "8." A. Z. C. Filed in my office Jan. 26th, 1883. Chas. F. Hunt, clerk.

COMPLAINANTS' EXHIBIT "9."

\$8,717.25.

BERNALILLO, N. M., Dec. 10th, 1889.

Twelve months after date we promise to pay to the order of Mrs. Guadalupe P. Harrison eight thousand seven hundred and seventeen and $\frac{25}{100}$ dollars, with interest, at 10 per cent. per annum, from date till paid; value received

MARIANO PEREA.
PEDRO PEREA.
J. R. ARMIJO.

No. —.

Due 12-10.

(Endorsed on back of exhibit :)

Pay to Albuquerque National bank or order for collections. Guadalupe P. Harrison, G. W. Harrison.

(Endorsed on face :)

Collection No. 6651. Albuquerque National bank. Albuquerque National bank, paid Dec. 10th, 1887. Albuquerque, N. M.

(Endorsed and marked further as follows :)

No. 2943. Ex. "9," A. Z. C. Filed in my office Jan. 6th, 1893. Chas. F. Hunt, clerk.

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COMPLAINANTS' EXHIBIT No. 10.

\$20.98.

BERNALILLO, N. M., 4-9, 1885.

At sight pay to the order of Guadalupe Perea twenty $\frac{98}{100}$ dollars, value received, and charge the same to Perea Brothers.

To First National bank, No. 4788, Santa Fé.

(Written across the corner :)

(Perea Brothers, wholesale grocers, Bernalillo, N. M.)

(Endorsed on back :)

Guadalupe Perea, Block & Michael, B. P. Schuster. Pay R. J. Palen, Esq., cashier, or order, for collection, account the Albuquerque National bank, Albuquerque, N. M. W. K. P. Wilson, cashier.

(Endorsed on face :)

First National bank. Paid April 24th, 1885. Santa Fé, New Mexico.

(Marked and endorsed further as follows:)

No. 2943. Ex. "10," A. Z. C. Filed in my office Jan. 26th, 1893.
Chas. F. Hunt, clerk.

COMPLAINANTS' EXHIBIT "11,"

Being stubs of checks, are in the words and figures as follows:

No. 1.

Fecha, Marzo 1, 1884..... \$12,908 00
Pague a Guadalupe Perea o al portador.

293 No. 2.

Fecha, Marzo 1, 1884..... \$3,356 00
Pague a Perea Bros. o al portador.

No. 3.

Fecha, Marzo 1, 1884..... \$2,997 60
Pague a Mariano Perea o al portador.

No. 4.

Fecha, Marzo 1, 1884.... \$1,678 00
Pague a Mariano S. Otero o al portador.

No. 5.

Fecha, Marzo 1, 1884..... \$1,678 00
Pague a Justiniano Castillo o al portador.

No. 6.

Fecha, Marzo 1, 1884..... \$3,356 00
Pague a Jose Ma. Castillo o al portador.

No. 7.

Fecha, Marzo 1, 1884... \$1,678 00
Pague a Jacobo Perea o al portador.

No. 8.

Fecha, Junio 9, 1884..... \$1,678 00
Pague a J. R. Armijo o al portador.

No. 9.

Fecha, Junio 6, 1884..... \$1,997 83
Pague a Pedro Perea o al portador.

No. 10.

Fecha, Enero 27, 1885..... \$313 36

Paguese a G-adalupe Perea o al portador. Por rentas de Jose y Julian por el ano 1884.

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No. 11.

Fecha, Enero 27, 1885..... \$2,841 64

Paguese a Mariana Perea o orden, de J. M. Perea, J. M. Castillo, Justinano Castillo, M. Perea, Pedro Perea, Benecio Perea, Jose Perea, Cesaria Perea, Barbara Perea, por rentas del ano de 1884, menos \$213.59.

No. 13.

Fecha, Enero 27, 1885..... \$339 47

Paguese a Mariano S. Otero o al portador. Por dividendo de rentas en Chihuahua, 1884.

No. 14.

Fecha, Enero 27, 1885..... \$339 47

Paguese a Justo R. Armijo o orden, por dividendo de renta in Chihuahua ano 1884.

No. 15.

Fecha, Enero 27, 1885... .. \$339 47

Paguese a Jacobo Perea o al portador. Por dividendo rentas in Chihuahua, 1884.

No. 12.

Fecha, Enero 27, 1885..... \$163 59

Paguese a Benecio Perea o al portador. Para acalabar dividendo de rentas por el ano 1884.

(Marked or endorsed:)

No. 2943. Ex. 11. A. Z. C. Filed in my office Jan. 26, 1893.
Chas. F. Hunt, clerk.

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COMPLAINANTS' EXHIBIT "12."

1750.

Capital, \$150,000.00.

The First National Bank of Santa Fé.

Pedro Perea, president; Thomas Catron, vice-president; Rufus J. Palen, cashier; John H. Vaughn, assistant cashier.

SANTA FÉ, N. M.

Statement of Dividends of the First National Bank of Santa Fé, N. M., from January 1st, 1887, to April 6th, 1892.

Date.	Per cent.	Amount of dividend.
Feb. 1, 1887.....	10	\$15,000 00
Aug. 1, 1887.....	10	15,000 00
Feb. 1, 1888.....	9	13,500 00
Aug. 1, 1888.....	8	12,000 00
Feb. 6, 1889.....	6	9,000 00
Aug. 1, 1889.....	9	13,500 00
Feb. 1, 1890.....	7	10,500 00
Aug. 1, 1890.....	10	15,000 00
Feb. 27, 1891.....	8	12,000 00
Aug. 1, 1891.....	8	12,000 00
Feb. 2, 1892.....	6	9,000 00
Totals.....	91	\$136,500 00

I certify that the above is a correct statement of the dividends of said bank between the dates above stated.

R. J. PALEN, *Cashier.*

(Marked or endorsed:)

2943. Ex. 12. A. Z. C. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

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COMPLAINANTS' EXHIBIT "13."

Recibi, Bernalillo, N. M., Diciembre 10, '84, de los Sres. Administradores del estado del finado Don Jose Leandro Perea, como parte en la hijuela de Jose Leandro Perea, 2nd, la siguiente propiedad:

Dinero	\$8,495 45
Ovejas vientrales at \$1.00 (4,158)	4,158 00
Carneros grandes at \$1.00 (243)	243 00
Idem Primales at .75 (423).....	316 28
Reces at \$10.00 (2).....	20 00
Bestias at \$15.00 (9).....	135 00
Efectos a costo	452 35
1 mula.....	100 00

Mitad de 1 carro	\$37 50
Costales Mais at \$1.00 (20)	20 00
Fanegas trijo at \$2.00 (10)	20 00
Harina Mala at 1½c. (1,085 lbs.)	16 27
Idem Mejor at 3c. (164 lbs.)	4 92
Segunda at \$1.50 saco (3 sa.)	4 50
1 Marrano	10 00
Dinero in Chihuahua	1,420 82
Acciones del Primer Banco de Albuquerque	178 55
Ovejas ventrales (818) a \$1.00	818 00

GUADALUPE PEREA.

(Marked or endorsed:)

TERRITORIO DE NUEVO MEXICO, }
 Condado de Bernalillo. }

Yo, W. H. Burke, Escribano de la Corte de Pruebas y ex-Oficio Registrador en y por dicho Condado, certifico que el antecedente recibo ha sido devidamente enregistrado en el Libro E de Testamentos, Pagina 602 and 603, esta dia 23 de Diciembre, A. D. 1886.

[SEAL.]

W. H. BURKE,
 Escribano y Registrador.

Plffs' Ex. 13.

297 Filed in my office Jan. 26, 1893.

CHAS. F. HUNT, Clerk.

COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijuela, pages 50 to 63, inclusive, offered in evidence.
 This is page 59.

Hijuela de Jesus Ma. Perea :

En dinero	\$8,405 45
Dinero en dendas	7,657 29
4,158 ovejas ventrale sat \$1.00	4,158 00
243 carneros grandes, \$1.00	243 00
335 idem primales, 75 cents.	250 25
2 reces, \$10.00	20 00
9 Bestias, \$15.00	135 00
Efectos a costo	452 35
1 mula	100 00
½ del valor de un carro, \$75.00	37 50
20 costales mais, \$1.00	20 00
10 Fanejas Trigo, \$2.00	20 00
1,085 lbs. Harina mala, \$1.50	16 27½
164 lbs. idem mejor, \$3.00	4 92
3 Sacos segundo, \$1.50	4 50
1 Marrano	10 00
Dinero in Chihuahua	1,420 82

En acciones del primer Banco de Albur.....	\$178 55
En acciones en el Puente de Bernalillo.....	71 43
En bonos y acciones T. S. N. R. R., valor.....	303 57
13,759.90 dendas en la tienda abaluradas at $33\frac{1}{3}$, 4,586.64, $\frac{1}{14}$ parte.....	327 61
9,696 dendas consideras malas at 50c. el peso, $\frac{1}{14}$ parte..	346 28
Each child's share.....	15,580 39 $\frac{1}{2}$

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COMPLAINANTS' EXHIBIT "14,"

(Being Book of Hijuela, pages 50 to 63, inclusive, offered in evidence.
This is page 52.)

Hijuela de Soledad Perea :

En dinero.....	\$8,495 45
Dinero en dendas.....	7,657 29
4,158 ovejas ventrales at \$1.00.....	4,158 00
243 carneros grandes, \$1.00.....	243 00
335 idem primales, .75	250 25
2 reces, \$10.00.....	20 00
9 bestias, \$15.00.....	135 00
Efectos a costo	452 35
1 mula.....	100 00
$\frac{1}{2}$ del valor de un carro, \$75.....	37 50
20 costales mais, \$1.00.....	20 00
10 fanegas trigo, \$2.00.....	20 00
1,085 lbs. harina mala, \$1.50.....	16 27 $\frac{1}{2}$
164 lbs. idem mejor, \$3.00	4 92
3 sacos segundo, \$1.50.....	4 50
1 marrano.....	10 00
Dinero in Chihuahua.....	1,420 82
En acciones del primer Banco de Albur.....	178 55
En acciones en el puente de Bernalillo.....	71 43
En bonos y acciones T. S. N. R. R. valor.....	303 57
13,759.90 dendas en la tienda at $33\frac{1}{3}$ el peso, 4,586.63, $\frac{1}{14}$ parte.....	327 61
9,696 dendas consideras malas at 50c. el peso en $\frac{1}{14}$ parte.....	346 26

COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijuela, pages 50 to 63, inclusive, offered in evidence.
This is page 53.

Hijuela de Filomena Perea :

En dinero	\$8,495 45
Dinero en dendas.....	7,657 29
299 4,158 ovejas ventrales at \$1.00.....	4,158 00
243 carneros grandes, \$1.00.....	243 00
335 idem primales, $\frac{75}{100}$ cents.....	250 25

2 reces, \$10.00.....	\$20 00
9 bestias, \$15.00.....	135 00
Efectos a costo.....	452 35
1 mula.....	100 00
$\frac{1}{2}$ del valor de un carro, \$75.00.....	37 50
20 costales mais, \$1.00.....	20 00
10 Fanejas Trigo, \$2.00.....	20 00
1,085 lbs. harina mala, \$1.50.....	16 27 $\frac{1}{2}$
164 lbs. idem mejor, \$3.00.....	4 92
3 Sacos segundo, \$1.50.....	4 50
1 Marrano.....	10 00
Dinero in Chihuahua.....	1,420 82
En acciones del Primer Banco de Albur.....	178 55
En acciones en el Puente de Bernalillo.....	71 43
En bonos y acciones T. S. N. R. R., valor.....	303 57
13,756.90 dendas en el tienda at 33 $\frac{1}{3}$ el peso, 4,586.63, $\frac{1}{14}$ parte.....	327 61
9,696 dendas consideras malas at 50c. el peso en $\frac{1}{14}$ parte.	346 28

COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijuela, pages 50 to 63, inclusive, offered in evidence.
This is page 54.

Hijuela de Mariano Perea:

En dinero.....	\$8,495 45
Dinero en dendas.....	7,657 29
4,158 ovejas ventrales at \$1.00.....	4,158 00
243 corneros grandes, \$1.00.....	243 00
335 idem primales, .75.....	250 25
2 reces, \$10.00.....	20 00
9 bestias, \$15.00.....	135 00
Efectos a costo.....	452 35
300 1 mula.....	100 00
$\frac{1}{2}$ del valor de un carro, \$75.00.....	37 50
20 costales mais, \$1.00.....	20 00
10 fanejas trigo, \$2.00.....	20 00
1,085 lbs. harina mala, \$1.50.....	16 27 $\frac{1}{2}$
164 lbs. idem mejor, \$3.00.....	4 92
3 sacos segundo, \$1.50.....	4 50
1 marrano.....	10 00
Dinero in Chihuahua.....	1,420 82
En acciones del primer Banco de Albur.....	178 55
En acciones en el puente de Bernalillo.....	71 43
En bonos y acciones T., S. N. R. R. valor..	303 57
13,759.90 dendas en la tienda, at 33 $\frac{1}{3}$ el peso 4,586.63, $\frac{1}{14}$ parte.....	327 61
9,696 deudas consideras malas, at 50c. el peso en $\frac{1}{14}$ parte.	346 28

COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijuelas, pages 50 to 63, inclusive, offered in evidence.
This is page 55.

Hijuela de Pedro Perea:

En dinero.	\$8,495 45
Dinero en dendas.	7,657 29
4,158 ovejas ventrales at \$1.00.	4,158 00
243 carneros grandes at \$1.00.	243 00
335 idem primales, .75.	250 25
2 reces, \$10.00.	20 00
9 bestias, \$15.00.	135 00
Efectos a costo.	452 35
1 mula.	100 00
$\frac{1}{2}$ del valor de un carro, \$75.00.	37 50
20 costales mais, \$1.00.	20 00
10 fanejas trigo, \$2.00.	20 00
1,085 lbs. harina mala, \$1.50.	16 27 $\frac{1}{2}$
164 lbs. idem mejor, \$3.00.	4 92
301 3 sacos segundo, \$1.50.	4 50
1 marrano.	10 00
Dinero in Chihuahua.	1,420 82
En acciones del Primer Banco de Albur.	178 55
En acciones en el puente de Bernalillo.	71 43
En bonos y acciones T. S. N. R. R. valor.	303 57
13,759.90 dendas en la tienda at 33 $\frac{1}{2}$ el peso 4,586.63, $\frac{1}{14}$ parte.	327 61
9,696 dendas consideras malas at 50c. el peso, en $\frac{1}{14}$ parte.	346 28

COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijuela, pages 50 to 63, inclusive, offered in evidence.
This is page 56.

Hijuela de Benicio F. Perea:

En dinero.	\$8,495 45
Dinero en dendas.	7,657 29
4,158 ovejas ventrales at \$1.00.	4,158 00
243 carneros grandes, \$1.00.	243 00
335 idem primales, 75 cents.	250 25
2 reces, \$1.00.	20 00
9 bestias, \$15.00.	135 00
Efectos a costo.	452 35
1 mula.	100 00
$\frac{1}{2}$ del valor de un carro, \$75.00.	37 50
20 costales mais, \$1.00.	20 00
10 Fanejas Trigo, \$2.00.	20 00
1,085 lbs. harina mala, \$1.50.	16 27 $\frac{1}{2}$

164 lbs. idem mejor \$3.00.....	\$4 92
3 sacos segundo, \$1.50.....	4 50
1 Marrano.....	10 00
Dinero in Chihuahua.....	1,420 82
En acciones del Primer Banco de Albur.....	178 55
En acciones en el Puente de Bernalillo.....	71 43
En bonos y acciones T. S. N. R. R., valor.....	303 57
302 13,759.90 dendas en la tienda at $33\frac{1}{3}$ el peso, 4,586.63, $\frac{1}{14}$ parte.....	327 61
9,696 dendas consideras malas at 50c. el peso, en $\frac{1}{14}$ parte.....	346 28

COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijuela, pages 50 to 63, inclusive, offered in evidence.
This is page 57.

Hijuela de Beatriz Perea:

En dinero.....	\$8,495 45
Dinero en dendas.....	7,657 29
4,158 ovejas ventrales at \$1.00.....	4,158 00
243 carneros grandes, \$1.00.....	243 00
335 idem primales, .75.....	250 25
2 reces, \$10.00.....	20 00
9 bestias, \$15.00.....	135 00
Efectos a costo.....	452 35
1 mula.....	100 00
$\frac{1}{2}$ de valor de un carro, \$75.00.....	37 50
20 costales mais, \$1.00.....	20 00
10 fanegas trigo, \$2.00.....	20 00
1,085 lbs. harina mala, \$1.50.....	16 27 $\frac{1}{2}$
164 lbs. idem mejor, \$3.00.....	4 92
3 sacos segundo, \$1.50.....	4 50
1 marrano.....	10 00
Dinero in Chihuahua.....	1,420 82
En acciones del Primer Banco de Albu.....	178 55
En acciones en le puente de Bernalillo.....	71 43
En bonos y acciones T., S. N. R. R. valor.....	303 57
13,759.90 dendas en la tienda at $33\frac{1}{3}$ 4,586.63 en $\frac{1}{14}$ parte.....	327 61
9,696 dendas consideras malas at 50c. el peso $\frac{1}{14}$ parte..	346 28

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COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijuela, pages 50 to 63, inclusive, offered in evidence.
This is page 58.

Hijuela de Jose L. Perea:

En dinero.....	\$8,495 45
Dinero en dendas.....	7,657 29
4,158 ovejas ventrales at \$1.00.....	4,158 00

243 carneros grandes, \$1.00.....	\$243 00
335 idem primales, .75.....	250 25
2 reces, \$10.00.....	20 00
9 bestias, \$15.00.....	135 00
Efectos a costo.....	452 35
1 mula.....	100 00
$\frac{1}{2}$ del valor de un carro, \$75.....	37 50
20 costales mais, \$1.00.....	20 00
10 fanejas trigo, \$2.00.....	20 00
1,085 lbs. harina mala, \$1.50.....	16 27 $\frac{1}{2}$
164 lbs. idem mejor, \$3.00.....	4 92
3 sacos segundo, \$1.50.....	4 50
1 marrano.....	10 00
Dinero in Chihuahua.....	1,420 82
En acciones del primer Banco de Albur.....	178 55
En acciones en el puente de Bernalillo.....	71 43
En bonos y acciones T. S. N. R. R. valor.....	303 57
13,759.90 dendas en la tienda at 33 $\frac{1}{2}$ el peso, 4,586.63, en $\frac{1}{14}$ parte.....	327 61
9,696 dendas consideras malas at 50c. el peso en $\frac{1}{14}$ parte.....	346 28

COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijuela, pages 50 to 63, inclusive, offered in evidence.
This is page 59.

Hijuela de Cesaria Perea :

En dinero.....	\$8,495 45
Dinero en dendas.....	7,657 29
304 4,158 ovejas vientrales at \$1.00.....	4,158 00
243 carneros grandes, \$1.00.....	243 00
335 idem primales, 75 cents.....	250 25
2 reces, \$10.00.....	20 00
9 bestias, \$15.00.....	135 00
Efectos a costo.....	452 35
1 mula.....	100 00
$\frac{1}{2}$ del valor de un carro, \$75.00.....	37 50
20 costales mais, \$1.00.....	20 00
10 fanejas trigo, \$2.00.....	20 00
1,085 lbs. harina mala, \$1.50.....	16 27 $\frac{1}{2}$
164 lbs. idem mejor, \$3.00.....	4 92
3 sacos segundo, \$1.50.....	4 50
1 marrano.....	10 00
Dinero in Chihuahua.....	1,420 82
En acciones del Primer Banco de Albur.....	178 55
En acciones en el puente de Bernalillo.....	71 43
En bonos y acciones T. S. N. R. R., valor.....	303 57
13,759.90 dendas en la tienda at 33 $\frac{1}{2}$ el peso, 4,586.63, en $\frac{1}{14}$ parte.....	327 61
9,696 dendas consideras malas at 50c. el peso, $\frac{1}{14}$ parte.....	346 28

COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijueta, pages 50 to 63, inclusive, offered in evidence.
This is page 60.

Hijueta de Jacobo Perea :

En dinero	\$8,495 45
Dinero en dendas	7,657 29
4,158 ovejas ventrales at \$1.00.....	4,158 00
243 carneros grandes at \$1.00.....	243 00
335 idem primales at .75.....	250 25
2 reces at \$10.00	20 00
9 bestias at \$15.00.....	135 00
Efectos a costo	452 35
305 1 mula.....	100 00
$\frac{1}{2}$ del valor de un carro, \$75.00..	37 50
20 costales mais, \$1.00.....	20 00
10 fanegas trigo, \$2.00.....	20 00
1,085 lbs. harina mala, \$1.50.....	16 27 $\frac{1}{2}$
164 lbs. idem mejor, \$3.00.....	4 92
3 sacos segunda, \$1.50	4 50
1 marrano	10 00
Dinero in Chihuahua.....	1,420 82
En acciones del Primer Banco de Albur.....	178 55
En acciones en el puente de Bernalillo.....	71 43
En bonos y acciones T. S. N. R. R. valor.....	303 57
13,759.90 dendas en la tienda at 33 $\frac{1}{4}$, 4,586.63 en $\frac{1}{14}$	327 61
9,696 dendas consideras malas at 50c. el peso, $\frac{1}{14}$ parte..	346 28

COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijueta, pages 50 to 63, inclusive, offered in evidence.
This is page 61.

Hijueta de Barbara Perea :

En dinero.....	\$8,495 45
Dinero en dendas.....	7,657 29
4,158 ovejas ventrales at \$1.00	4,158 00
243 carneros grandes, \$1.00.....	243 00
335 idem primales 75 cents.....	250 25
2 reces, \$10.00.....	20 00
9 Bestias, \$15.00.....	135 00
Efectos a costo.....	452 35
1 mula.....	100 00
$\frac{1}{2}$ del valor de un carro, \$75.00.....	37 50
20 costales mais, \$1 00.....	20 00
10 fanejas trigo, \$2.00.....	20 00
1,085 lbs. harina mala, \$1.50.....	16 27 $\frac{1}{2}$

	164 lbs. idem mejor, \$3.00.....	\$4 92
306	3 sacos segundo, \$1.50.....	4 50
	1 marrano.....	10 00
	Dinero in Chihuahua.....	1,420 82
	En acciones del primer Banco de Albur.....	178 55
	En acciones en el Puente de Bernalillo.....	71 43
	En bonos y acciones T. S. N. R. R., valor.....	303 57
	13,759.90 dendas en la tienda at 33 $\frac{1}{3}$, 4,586.63, en $\frac{1}{14}$	327 61
	9,696 dendas consideras malas at 50c. el peso, $\frac{1}{14}$ parte..	346 28

COMPLAINANTS' EXHIBIT "14,"

Being Book of Hijuela, pages 50 to 63, inclusive, offered in evidence.
This is page 62.

Hijuela de Jose L. Perea, Second :

	En dinero.....	\$8,495 45
	Dinero en dandas.....	7,657 29
	4,158 ovejas ventrales at \$1.00.....	4,158 00
	243 carneros grandes at \$1.00.....	243 00
	335 idem primales at .75.....	250 25
	2 reces at \$10.00.....	20 00
	9 bestias at \$15.00.....	135 00
	Efectos a costo.....	452 35
	1 mula.....	100 00
	$\frac{1}{2}$ del valor de un carro, \$75.00.....	37 50
	20 costales mais, \$1.00.....	20 00
	10 fanegas trigo, \$2.00.....	20 00
	1,085 lbs. harina mala, \$1.50.....	16 27 $\frac{1}{2}$
	164 lbs. idem mejor, \$3.00.....	4 92
	3 sacos segundo, \$1.50.....	4 50
	1 marrano.....	10 00
	Dinero in Chihuahua.....	1,420 82
	En acciones del Primer Banco de Albur.....	178 55
	En acciones en el puente de Bernalillo.....	71 43
307	En bonos y acciones T. S. N. R. R. valor.....	303 57
	13,759.90 dendas en la tienda at 33 $\frac{1}{3}$, 4,586.63 en $\frac{1}{14}$	327 61
	9,696 dendas consideras malas at 50c. el peso, $\frac{1}{14}$ parte..	346 28

COMPLAINANTS' EXHIBIT "14."

Being Book of Hijuelas, pages 50 to 63, inclusive, offered in evidence.
This is page 63.

Hijuela de Julian Perea :

	En dinero.....	\$8,495 45
	Dinero en dendas.....	7,657 29
	4,158 ovejas ventrales at \$1.00.....	4,158 00
	243 carneros grandes at \$1.00.....	243 00
	335 idem primales, .75.....	250 25

2 reces, \$10.00.....	\$20 00
9 bestias, \$15.00.....	135 00
Efectos a costo.....	452 35
1 mula.....	100 00
$\frac{1}{2}$ del valor de un carro, \$75.00.....	37 50
20 costales mais, \$1.00.....	20 00
10 fanejas trigo, \$2.00.....	20 00
1,085 lbs. harina mala, \$1.50.....	16 27 $\frac{1}{2}$
164 lbs. idem mejor, \$3.00.....	4 92
3 sacos segundo, \$1.50.....	4 50
1 marrano.....	10 00
Dinero in Chihuahua.....	1,420 82
En acciones del Primer Banco de Albur.....	178 55
En acciones en el puente de Bernalillo.....	71 43
En bonos y acciones T. S. N. R. R. valor.....	303 57
13,759.90 dendas en la tienda at 33 $\frac{1}{2}$ el peso, 4,586.63 $\frac{1}{4}$ parte.....	327 61
9,696 dendas consideras malas at 50c. el peso, en $\frac{1}{4}$ parte.....	346 28

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PLAINTIFFS' EXHIBIT "15."

Miguel Salas, presidente.

Ramon R. Lujan, contador.

Banco Mexicano.

CHIHUAHUA, Mayo 19, 1892.

D. Pedro Perea, Bernalillo, N. M.

MU APRECIABLE SENOR NUESTRO: Obsequiando los deseos del Sr. D. Nestor Armijo, y para que la sirva en el pleito que tienen entablado le remitimos check No. 11, expedido por los administradores: J. M. Perea, Mariano Perea, Pedro Perea en 27 de Enero, 1885, contra este banco por la suma de \$2,841.64, que cubrimos, siendo por tal motivo nulo para nosotros, cuyo documentos para destruirlo esta anotado en su frente con la palabra "pagado."

Le suplicamos se sirva acusarnos recibo de ese check y devolvemos le en su oportunidad. Sin mas somos de afinas atts. y ss.

MIGUEL SILAS.

(Endorsed :) 2943. Pltfs' Ex. 15. K. A. S. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

No. 11.

CHIHUAHUA, Mex., Enero 27, 1885.

Banco Mexicano.

Paguese a Mariano Perea o orden dos mil ochocientos cuarenta y uno $\frac{64}{100}$ pe fuertes.
\$2,841.64.

J. M. PEREA,
MARIANO PEREA,
PEDRO PEREA,
Administradores.

(Endorsed on back :)

309 Pague a Dona Guadalupe Perea, Mariano Perea. Pague a Don Felix Francisco Maceyra, Guadalupe Perea.

(Endorsed on face :)

Pagado.

(Marked on back :)

Complainants' Exhibit, 6, 16, '92. K. A. S.

(Original Receipt Referred to in Testimony, but Not Marked as an Exhibit.

Recibi, Bernalillo, N. M., Enero 27, '85, de los Sres. administradores del estado del finado Don Jose L. Perea, las siguientes cantidades de dinero en pesos fuertes Mejicanos :

Perteneciente a mi.....	\$428 00
Idem a Jose L. Perea, Second.....	30 57
Idem a Julian Perea.....	30 57
Total ..	\$489 15

GUADALUPE PEREA.

Recibi, Bernalillo, N. M., Enero 27, '85, de los Sres. administradores del estado del finado Don Jose L. Perea la suma de (\$313.36) Tres Cientos Trece con ³⁶/₁₀₀ Pesos, fuertes Mejicanos por dividendo de retat pertenecientes a Jose L. Perea, 2nd, y Julian Perea, de las casas de Chihuahua por el ano de 1884.

GUADALUPE PEREA.

(Marked or endorsed :)

TERRITORIO DE NUEVO MEJICO,)
Condado de Bernalillo.)

Yo, W. H. Burke, escribano de la Corte de Pruebas y ex-Oficio Registrador de dicho Condado, certifico que los antecedentes dos recibos son devidamente enregistrados en el Libro E de Testamentos, Paginas 603 y 604, este dia 22 de Diciembre, A. D. 1886.

[SEAL.]

W. H. BURKE,
Escribano y Registrador.

Filed in my office Jan. 26, 1893.

CHAS. F. HUNT, Clerk.

DEFENDANTS' EXHIBIT "A."

Obejas recibidas por mi y por un menor durante el ano de 1886 :

	Obejas.	Borregos.	Cabras.	Cabritas.	Burros.
Roberto Martin.....	1,715	551	24	3	2
Francisco Montoya.....	1,000				
Juan Andres Martines....	1,234	785		1	1-2-31-2
En Quida.....	790	340	16-40	8-11	

Carneros grandes 486, Carneros primales 486.

Carneros padres 20, Chibatos 22.

	Obejas.	Borregos.	Cabras.	Cabritas.	Burros.
Amado Chaves.....	520	185-1861			
Santiago Baca finas	428			Carneros primales.	
Damian Duran.....	780		Rumaldo Baca ...	184	
Quico Chavez	1,636		Quico Chavez.....	88	

8,103

	\$8,395.45	Dinero.
	4,158.00	Obejos.
	243.00	Carneros grandes.
" 316 "—	250.25	Carneros primales.
	20.00	Reces.
	135.00	Bestias.
	452.35	Efectos a costo.
	100.00	Mula.
311	37.50	Mitad de un carro.
	20.00	Costales mais.
	20.00	Fanejas trijo.
	16.27 $\frac{1}{2}$	Arina mala.
	4.92	Arina mejor.
	4.50	Sacos segundos.
	10.00	Marrano.
	1,420.82	Dinero in Chihuahua.
	178.55	Acciones del Banco Albur.
		15,566.61 $\frac{1}{2}$
		2
		<hr/>
		31,133.33(4)
		<hr/>
		87,783.31

(Marked and endorsed :)

M. Perea. Statement for notes to J. L. P., 2nd, and Julian P., minors. 2,943. Def'ts' Ex. "A," A. Z. C. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

DEFENDANTS' EXHIBIT "B."

Twenty-seventh Legislative Assembly, Territory of New Mexico.

SANTA FÉ, Enero 30th de 1887.

Senora Dona Guadalupe Perea.

SENORA : Arregle las cuentas de las rentas de las ultimos dos anos y le tocan a vd. por sus dos hijos docientos veintiocho pesos (\$228.70) setenta centavos, de hay revaje noventa y cuatro pesos (\$94.97) noventa y siete centavos que pague por vd. por el Tejon ; y creo que pague algo mas, pero yo lo buscare, y lo mastrare si lo hallo.

312 Thornton tambien pague lo que debia, y le corresponde a vd. con sus hijos dos mil ocho ientos cincuenta y ocho pesos (\$2,858.75) setenta y cinco centavos.

Yo puedo mostrar y explicarle a su esposo de vd. estas cuentas en cualesquier tiempo que el lo desee.

Lo que corresponde del pago de Thornton son dos mil setecientos veinticinco pesos (\$2,725.02) dos centavos.

Incluso le mando una libranza por dos mil ochocientos cincuenta y ocho pesos (\$2,858.75) setenta y centavos.

Su servidor,

PEDRO PEREA.

(Marked or endorsed :) Def'ts' Ex. "B." A. Z. C. 2943. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

DEFENDANTS' EXHIBIT "C."

Sheriff's office, county of Bernalillo.

No. 49.

OCT. 31, 1885.

Received from Jose L. Perea, Second, in payment of taxes levied for the year 1885, two hundred and five $\frac{50}{100}$ dollars, as follows :

Interest on county bonds	\$15 90
Interest on penitentiary bonds.....	7 99
Interest on capital building bonds....	12 78
For territorial funds.....	79 88
For county fund....	39 84
For school fund.....	47 93

Total ... \$205 50

313 Precinct No. 1.

SANTIAGO BACA,

Collector in and for said County,

Per J. W. BARTON, *Deputy.*

(Marked or endorsed :) 2943. Ex. "C." A. Z. C. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

DEFENDANTS' EXHIBIT "D."

Sheriff's office, county of Bernalillo.

No. 47.

OCTOBER 22ND, 1886.

Received from J. L. Perea, Jr., in payment of taxes levied for the year 1886, two hundred and twelve and $\frac{48}{100}$ dollars, as follows :

Interest on court-house and jail bonds.....	\$23 96
Interest on county bonds.....	7 99
Interest on penitentiary bonds....	7 99
Interest on capital building bonds.....	12 78
For territorial funds....	79 88
For county funds.....	39 94
For school funds	39 94

Total ... \$212 48

Precinct No. 1.

SANTIAGO BACA,

Collector in and for said County,

Per J. W. BARTON, *Deputy.*

314 (Marked or endorsed :) 2943. Ex. "D." A. Z. C. Filed in my office January 26, 1893. Chas. F. Hunt, clerk.

DEFENDANTS' EXHIBIT "E."

Sheriff's office, county of Bernalillo.

No. 3.

SEPTEMBER 7, 1887.

Received from Jose L. Perea, Second, by G. W. Harrison, in payment of taxes levied for the year 1887, two hundred and six and $\frac{44}{100}$ dollars, as follows:

Interest on court-house and jail bonds.....	\$23 82
Interest on county bonds.....	7 94
Interest on penitentiary bonds.....	7 94
Interest on capital building bonds.....	7 94
For territorial fund.....	79 40
For county fund.....	39 70
For school fund.....	39 70

Total..... \$206 44

Precinct No. 1.

JOSE L. PEREA,

Collector in and for said County,

By J. S. GARCIA, *Deputy.*

(Marked or endorsed :) 2943. Ex. "E." A. Z. C. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

315 DEFENDANTS' EXHIBIT "F."

Terms, —.

BERNALILLO, N. M., 8, 28, '84.

Mrs. Guadalupe Perea, Bernalillo, bought of Perea Brothers, jobbers in dry goods, groceries, produce, hardware, liquors, &c.

Fistune on mill for account of her son, J. L. Perea..... \$40 00

Received payment.

PEREA BROTHERS.

(Marked or endorsed :) 2943. Ex. "F." A. Z. C. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

DEFENDANTS' EXHIBIT "G."

SANTA FÉ, N. M., Feb. 29, 1889.

Estate of J. L. Perea, Jr., to R. H. Longwill, M. D., Dr., professional services rendered.

One visit to Bernalillo and treatment..... \$125 00

Received payment in full from Dr. W. G. Harrison.

Dr. R. H. LONGWILL, M. D.

(Marked or endorsed :) 2943. Ex. "G." A. Z. C. Filed in my office Jan. 26th, 1893. Chas. F. Hunt, clerk.

DEFENDANTS' EXHIBIT "H."

Dr. James H. Wroth, office Second street, corner Railroad avenue, Albuquerque, N. M.

316 Received of Dr. G. W. Harrison, ten dollars for buggy, team and expenses connected with visit to Bernalillo to see Jose Perea, Second, deceased.

JAMES H. WROTH.

(Marked or endorsed:)

2943. Ex. "H." A. Z. C. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

DEFENDANTS' EXHIBIT "I."

ALBUQUERQUE, N. M., *August 26th*, 188-.

G. W. Harrison, Bernalillo, bought of E. Montfort, undertaker, coffins, funeral goods, caskets; H. A. Montfort, manager and funeral director; embalming a specialty. First street.

1-4' 6'' metallic casket, full trimmed, and outside box, and undertaker's visit to Bernalillo..... \$90 00

Received payment.

E. MONTFORT.

(Marked or endorsed:)

2943. Ex. "E." A. Z. C. Filed in my office Jan. 26th, 1893. Chas. F. Hunt, clerk.

DEFENDANTS' EXHIBIT "J."

BERNALILLO, N. M., *Aug. 29th*, 1887.

Mr. Dr. G. W. Harrison to Rev. S. Parisi, Dr.

Aug. 29. To one novena of masses..... \$54 00
Aug. 29. To cash to Bro. Gabriel to ring.. 15 00

\$69 00

317 Funeral of J. L. Perea :

Aug. 29. To fabrica 1st franco \$25 00
Aug. 29. To torubas and altar's fixings..... 25 00
Aug. 29. To assistance of four priests, each \$25.00..... 100 00
Aug. 29. To my fees..... 75 00

\$225 00

Zapatos \$175 linen 2 yds., .80.....	\$2 55
Corbata .25, voletas -.00, notica \$1.00.....	5 25
Guantes .25, stampos \$1.00.....	1 25
Gastos a Albuq., etc., 2 veces.....	90 00
Cajon, etc.....	
Velas 3 cajas finas \$1.75.....	5 25
	<hr/>
Despachos.....	\$109 30
Gastos de Dr. Wroth.....	60
Hon. Gabriel.....	10 00
	<hr/>
Total.....	\$129 90

(Endorsed :) No. 2943. Ex. "J." A. Z. C. Filed in my office
Jan. 26, 1893. Chas. F. Hunt, clerk.

DEFENDANTS' EXHIBIT "K."

For and in consideration of the sum of \$525.00 (five hundred and twenty-five dollars), to us in hand paid, the receipt of which is hereby acknowledged, we hereby assign, set over, transfer and convey to George W. Harrison, all the right, title, interest, claim and demand of J. M. Perea, as heir-at-law of Jose Leandro Perea, Second, 318 in and to the personal property left by the said decedent at his death, and which interest was by the said J. M. Perea conveyed and set over and assigned to the undersigned by the instrument hereto attached; and we do hereby authorize and empower the said G. W. Harrison to demand from the administrator of the said estate all moneys or personal property, of whatsoever nature or kind, which may upon the distribution of the said estate be found to be coming to the said J. M. Perea and to us assigned, and to receipt to the said administrator for the same as fully as we could do ourselves.

In witness whereof we have hereunto set our hands and seals, this 20th day of November, A. D. 1889.

[SEAL.]

SYDNEY A. HUBBELL. [SEAL.]
CESARIO P. HUBBELL. [SEAL.]

STATE OF COLORADO, }
County of Pueblo. }

On this 27th day of November, A. D. 1889, before me personally appeared S. A. Hubbell and Cesaria P. de Hubbell, his wife, to me known to be the persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

In witness whereof I have hereunto set my hand and official seal on the day and year first above written.

My commission expires October 3d, 1892.

C. L. HILL,
Notary Public for Pueblo County, Colorado.

For value received, I hereby sell, assign, transfer and set over unto Sydney A. Hubbell, of the county of Bernalillo and Territory of New Mexico, all my right, title, interest, claim and demand, as heir-at-law of Jose Leandro Perea, Second, deceased, in and to the
 319 personal property left by the said decedent at his death; and do hereby authorize and empower the said Sydney A. Hubbell to demand from the administrator of the estate, when appointed, all moneys or personal property, of whatsoever nature or kind, which may upon the distribution of the said estate be found to be coming to me, as one of the heirs-at-law of the said decedent, and to receipt to the said administrator for the same as assignee.

Witness my hand and seal this 31st day of August, A. D. 1887.

J. M. PEREA. [SEAL.]

Witnesses:

PEDRO PEREA.

MARIANO PEREA.

(Marked and endorsed:)

2943. Ex. "K." A. Z. C.

Assignment.

From Sydney A. Hubbell and wife to G. W. Harrison, and from J. M. Perea to Sydney A. Hubbell in the matter of personal property of Josea Leandro Perea, Second.

TERRITORY OF NEW MEXICO, {
 County of Bernalillo, } ss:

This instrument was filed for record on the 5th day of December, 1889, at 2.40 o'clock a. m.

Recorded in vol. A., Miscellaneous Record- of said county, folios 110 and 111.

H. V. HARRIS, *Recorder*.

Neill B. Field, attorney, Albuquerque, N. M., attorney for —.

Filed in my office Jan. 26, 1893.

CHAS. F. HUNT, *Clerk*.

320

DEFENDANTS' EXHIBIT "L."

For and in consideration of the sum of six hundred dollars, to us in hand paid, the receipt of which is hereby acknowledge-, we hereby assign over, transfer and convey to George W. Harrison all our right, title and interest in and to the personal property of the estate of Jose L. Perea, Second, upon which administration is now pending.

And we hereby authorize and empower the said George W. Harrison to receipt for and receive all interest that might or may be coming to us from said estate, as fully as we could do ourselves.

In witness whereof we have hereunto set our hands and seals, on this the 14th day of May, A. D. 1890.

MARIANO S. OTERO.

FILOMENA P. OTERO.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

On this, the 14th day of May, A. D. 1880, before me personally appeared Mariano S. Otero and Filomena Perea de Otero, his wife, to me known to be the persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

In witness whereof I have hereunto set my hand and official seal, on the day and year last above written.

Bernalillo, N. M., May 14th, 1890.

B. P. SCHUSTER,
Notary Public.

(Marked or endorsed:)

2943. Ex. "L." A. Z. C.

Mariano S. Otero and wife to George W. Harrison. Assignment of interest as heirs-at-law in the estate of Jose L. Perea, Second.

321 TERRITORY OF NEW MEXICO, }
County of Bernalillo, } ss:

This instrument was filed for record on the 14th day of May, A. D. 1890, at 2 o'clock p. m. Recorded in vol. A, "Miss." of Records of said county, folios 122, 123.

[SEAL.]

H. V. HARRIS, *Recorder.*

Filed in my office Jan. 26, 1893.

CHAS. F. HUNT, *Clerk.*

DEFENDANTS' EXHIBIT "L ½."

Selebraranon los obligaciones el dia 10 de Diciembre, '84.

\$7,514 89

7,514 89

\$15,029 78

15,029 78

\$30,057 56

(Endorsed or marked as follows:)

2943. Ex. L ½. A. Z. C. Marked for identification. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

DEFENDANTS' EXHIBIT "M."

This indenture, made the 16th day of April, A. D. one thousand and eight hundred and eighty-eight, by and between Cesaria Perea de Hubbell and Sydney A. Hubbell, husband and wife, of
 322 Albuquerque, Bernalillo county, Territory of New Mexico,
 parties of the first part, and George W. Harrison, of Bernalillo county, party of the second part;

Witnesseth, that the said parties of the first part, for and in consideration of the sum of thirty-three and $\frac{33}{100}$ dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, *dismiss*, release, and forever quitclaim, unto the said party of the second part and to his heirs and assigns, all that certain tract, piece or parcel of land, situated in the county of Bernalillo and Territory of New Mexico, and bounded and particularly described as follows, to wit:

An undivided twenty-fourth interest in and to the land known as the "alfalfa land," situated near Bernalillo, in said county and Territory, and bounded on the north by lands of Benecio F. Perea; on the south by land of Justo R. Armijo; on the east by Sandia mountains, and on the west by the public road of Bernalillo, and being seventy-six and $\frac{2}{3}$ ($76\frac{2}{3}$) varas in width from north to south; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and reversion and reversions, remainder and remainders, rents, issues and profits thereof;

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first above written.

S. A. HUBBELL. [SEAL.]
CESARIA P. HUBBELL. [SEAL.]

In presence of—
E. W. DOBSON.

323 TERRITORY OF NEW MEXICO,)
County of Bernalillo.)

Be it remembered that on the 16th day of April, A. D. one thousand eight hundred and eighty-eight, before the undersigned, a notary public within and for the said county and Territory aforesaid, personally came Cesaria Perea de Hubbell and Sydney A. Hubbell, husband and wife, personally known to me as the persons whose names are subscribed to the foregoing deed, and they acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth; and the said Cesaria de Hubbell, being first informed of the contents of said instrument, did confess on an examination separate and independent of her said husband that she executed the same voluntarily, or without the compulsion or illicit influence of her said husband.

In witness whereof I have hereunto set my hand and affixed my official seal on this the 16th day of April, A. D. 1888.

[SEAL.] E. W. DOBSON,
Notary Public.

(Marked or endorsed :)

2943. Ex. "M." A. Z. C.

Quitclaim deed from Cesaria Perea de Hubbell and Sydney A. Hubbel to George W. Harrison.

Int. in J. L. Perea, Second, land in Bernalillo.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. } ss :

This instrument was filed for record on the 16th day of April,
A. D. 1888, at 11.30 o'clock a. m.

324 Recorded in vol. 9 of Records of said county, folio-544, 545.

F. H. KENT, *Recorder*,
By J. A. SOMMERS, *Deputy*.

Filed in my office Jan. 26, 1893.

CHAS. F. HUNT, *Clerk*.

DEFENDANTS' EXHIBIT "N."

Quitclaim Deed.

This indenture, made the — day of January, in the year one thousand eight hundred and eighty-eight, between Mariano S. Otero and Filomena P. Otero, his wife, of Bernalillo county, New Mexico, of the first part, and George W. Harrison, of same place, of the second part;

Witnesseth, that the said parties of the first part, for and in consideration of one dollar, lawful money of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, they remised, released, sold, conveyed and quitclaimed, and by these presents do remise, release, sell, convey and quitclaim unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest, claim and demand whatsoever, of the said parties of the first part, of, in and to the following-described $\frac{1}{4}$ undivided part of that certain tract or piece of land situated, lying and being in Bernalillo precinct, county of Bernalillo, Territory of New Mexico, consisting of twenty-six and $\frac{3}{4}$ varas in width from north to south, and with following boundaries: On north by land of Benicio F. Perea; on east by the limits of Bernalillo grant; on south by land of Justo Armijo, and
325 on west by main road of Bernalillo;

To have and to hold all and singular the above mentioned and described premises, with the appurtenances and privileges thereunto belonging, or in anywise appertaining; and all the estate, right, title, interest and claim whatsoever, of the said part of the first part, either by law or equity, to the only proper use, benefit and behoof of the said part of the second part, — heirs and assigns forever.

In witness whereof the said part-of the first part ha- hereunto set
— hands and seals the day and year first above written.

M. S. OTERO.

FILOMENA P. OTERO.

[SEAL.]
[SEAL.]

Signed, sealed and acknowledged before us—

— —
— —

TERRITORY OF NEW MEXICO, }
County of Bernalillo, } ss :

On this 25th day of January, A. D. one thousand eight hundred and eighty-eight, before me, the undersigned, a notary public within and for the county of Bernalillo, in the Territory of New Mexico, personally came Mariano S. Otero, Filomena P. Otero, his wife, to me personally known to be the same persons whose names are subscribed to the foregoing conveyance and instrument of writing, as parties to the same, and acknowledged that they signed, sealed and executed the same, and the said Filomena P. Otero, being by me first informed of the contents of the same and made acquainted therewith, confessed and acknowledged on an examination separate and apart from and independent of her said husband, that she executed the same voluntarily and without compulsion or illicit influence of her said husband.

In witness whereof, I have hereunto set my hand and
326 affixed my official seal at my office in — the day and year first above written.

JOSE M. CHAVEZ,

Notary Public.

[SEAL.]

(Marked or endorsed :)

Quitclaim deed.

Quitclaim deed M. S. Otero and wife to G. W. Harrison ; interest in J. L. Perea, Second, land in Bernalillo.

TERRITORY OF NEW MEXICO, }
County of Bernalillo, } ss :

I hereby certify that this instrument was filed for record on the 28th day of January, A. D. 1888, at 10 o'clock a. m., and was duly recorded in Book "10" of the Records of Deeds and Conveyances, pages 160 and 161, on this 21st day of February, A. D. 1888.

Fee, \$1.50. Due.

Witness my hand and seal of office.

[SEAL.]

F. H. KENT,

P. C. and ex Officio Recorder.

J. A. SOMMERS, *Deputy.*

2943. Ex. N. A. Z. C.

Filed in my office Jan. 26, 1893.

CHAS. F. HUNT, *Clerk.*

DEFENDANTS' EXHIBIT "O."

(Copy Report No. 1.)

Report of the Administrators of the Estate of Jose Leandro Perea, Deceased

In the Probate Court, Bernalillo County, May Term, 1884.

To the Honorable Thos. C. Gutierrez, judge of the probate court within and for said county of Bernalillo:

The undersigned, administrators of the estate of Jose Leandro Perea, deceased, would respectfully submit for your inspection the following report of our proceedings as such administrators:

Amounts Paid Out.

	Cr.
Amount paid Jesus M. Perea.....	\$15,586 38
Josefa Perea.....	15,586 38
Solidad Perea.....	15,586 38
Filomena Perea.....	15,586 38
Mariano Perea.....	15,586 38
Pedro Perea.....	15,586 38
Benicio Perea.....	15,586 38
Beatriz Perea.....	15,586 38
Jose L. Perea.....	15,586 38
Cesaria Perea.....	15,586 38
Jacobo Perea.....	15,586 38
Barbara Perea.....	15,586 38
Jose L. Perea, Second.....	15,586 38
Julian Perea.....	15,586 38
Dona Gaudalupe Perea (wid.).....	43,262 24
Due to administrators 2 per cent. on amount received.	11,444 50
Paid appraisers.....	1,050 25
Traveling expenses of administrators.....	300 00
Total	\$274,266 31

Recapitulation.

Amount received.....	\$457,780 60
Amount distributed, with fees and costs.....	274,266 31
	<hr/>
	\$183,514 29

(Debit side admitted.)

Statement.

This balance is still in the hands of the administrators, but there should be deducted some items of expense consisting of attorneys' fees, cost of suit, etc., the exact amount of which cannot now be determined. The property still in our hands consists

of uncollected debts, a portion of which are now in suit, and of personal property—out on partida, which is also in suit, and of a number of small uncollected accounts. We would further report that we are using our best efforts to collect the outstanding indebtedness and to gather in and distribute the personal property out on partida, and that we hope to complete the administration and make our final report by the end of the present year, and we ask that we be given until the end of this year for that purpose.

JESUS M. PEREA,
MARIANO PEREA,
PEDRO PEREA,

Administrators of the Estate of Jose Leandro Perea.

Approved this 10th day of May, A. D. 1884.

T. C. GUITERRES,
Probate Judge.

Filed and duly recorded this 10th day of May, A. D. 1884.

J. L. PEREA, *Clerk*,
Per L. T. ROBERTS, JR., *Deputy*.

(Copy of Report No. 2.)

Of the administration of the estate of Jose L. Perea.

To the Honorable J. R. Armijo, probate judge of the county of Bernalillo:

We, the administrators of the estate of Jose L. Perea, respectfully submit the following statement of receipts and disbursements since the making and presentation of our last report, which was filed and approved May 10th, 1884.

329 The administrators of the estate of Jose L. Perea, deceased, in account with said estate.

	Cr.
By cash paid J. R. Armijo.....	\$3,672 59
By cash paid Manuel Valdez, salary.....	466 65
By cash paid T. B. Catron as attorney.....	1,500 00
By cash paid Stone & Stone as attorneys.....	859 85
By cash paid for expenses on sheep from Solomon Barth.....	294 64
By cash paid for expenses on sheep from Ronaldo Baca.....	100 00
By cash paid for expenses on sheep from Franco Chavez, Second.....	25 00
By cash paid Perea Bros., as per account rendered . . .	1,416 00
By cash paid clerk first judicial district court....	175 00
By cash paid Dona Guadalupe Perea.....	6,050 00
By fees on account paid out as per report No. 1, 262,821.81.....	6,570 55
By sheep lost from those received from Franco Chavez, Second, 411, \$1.00.....	411 00
By sheep lost from those received from Solomon Barth, 51 at \$1.00.....	51 00

By sheep lost from those received of Romaldo Baca, 338 at \$1.00.....		\$338 00
330 By reduction debts of Franco Chavez, Second, as per settlement of May 3d, 1884, approved by probate court.....		1,838 10
By amount paid for Palace Hotel Company stock.....		10,000 00
By amount paid for house of Ronaldo Baca at mortgage sale.....		
By amount paid Jesus M. Perea, in sheep, 1,575 at \$1.00.....	\$1,575 00	
By amount paid Jesus M. Perea in cash....	496 71	
		2,071 71
By amount paid Josefa Perea in sheep, 1,575 at \$1.00.....	1,575 00	
By amount paid Josefa Perea in cash.....	496 71	
		2,071 71
By amount paid Soledad Perea in sheep, 1,575 at \$1.00.....	1,575 00	
By amount paid Soledad Perea in cash.....	496 71	
		2,071 71
By amount paid Filomena Perea in sheep, 1,575 at \$1.00.....	1,575 00	
By amount paid Filomena Perea in cash....	496 71	
		2,071 71
By amount paid Mariano Perea in sheep, 1,575 at \$1.00.....	1,575 00	
By amount paid Mariano Perea in cash....	496 71	
		2,071 71
By amount paid Pedro Perea in sheep, 1,575 at \$1.00.....	1,575 00	
331 By amount paid Pedro Perea in cash....	496 71	
		2,071 71
By amount paid Benicio Perea in sheep, 1,575 at \$1.00.....	1,575 00	
By amount paid Benicio F. Perea in cash....	496 71	
		2,071 71
By amount paid Beatriz Perea in sheep, 1,575 at \$1.00.....	1,575 00	
By amount paid Beatriz Perea in cash.....	496 71	
		2,071 71
By amount paid Jose L. Perea in sheep, 1,575 at \$1.00.....	1,575 00	
By amount paid Jose L. Perea in cash.....	496 71	
		2,071 71
By amount paid Cesaria Perea in sheep, 1,575 at \$1.00.....	1,575 00	
By amount paid Cesaria Perea in cash.....	496 71	
		2,071 71
Paid Jacobo Perea in sheep, 1,575 at \$1.00..	1,575 00	
Paid Jacobo Perea in cash.....	496 71	
		2,071 71

Paid Barbara Perea in sheep, 1,575 at \$1.00.	\$1,575 00	
Paid Barbara Perea in cash.....	496 71	
		\$2,071 71
Amount paid Jose L. Perea, 2nd, in sheep, 1,575 at \$1.00.....	1,575 00	
Amount paid Jose L. Perea, 2nd, in cash	496 71	
332		2,071 71
Amount paid Guadalupe Perea as heir of Julian Perea, in sheep, 1,575 at \$1.00....	1,575 00	
Amount paid in cash.....	496 71	
		2,071 71
Amount paid Guadalupe Perea, as widow, in sheep, 5,384 at \$1.00.....	5,384 00	
Amount paid Guadalupe Perea in cash.....	1,985 84	
		7,370 84
By fees upon disbursement, 2½ per cent. on \$70,072.61, as shown hereby.....		1,751 80
By fees on amounts received, 2½ per cent. on \$16,500, as shown hereby.....		412 50
By balance....		121,206 83
		<u>\$200,014 29</u>

(Debit side omitted.)

(Copy of Report No. 3, December 11, '86.)

Of the administrators of the estate of Jose L. Perea, deceased.

To the Hon. J. R. Armijo, probate judge of the county of Bernalillo :

We, the administrators of the estate of Jose L. Perea, respectfully submit the following statement of receipts and disbursements, since the making and presentation of our last report, which was filed and approved June 1, 1886 :

(Debit side omitted.)

To Jose Perea, 2d, cash.....	\$128 22	
333 To Jose Perea, 2d, sheep.....	577 00	
Am't of outstanding indebtedness....	4,468 26	
⅛ part of M. Gonzales' vineyard.....	189 55	
		\$5,363 03
To Guadalupe Perea, as heir of Julian Perea, cash.....	\$128 22	
Sheep.....	577 00	
Am't of outstanding indebtedness.....	4,468 26	
⅛ part of M. Gonzales' vineyard.....	189 55	
		\$5,363 03
To Guadalupe Perea, as widow, cash.....	\$512 28	
Sheep.....	2,308 00	
Am't of outstanding indebtedness.....	14,181 22	
⅛ part of M. Gonzales' vineyard.....	758 20	
		<u>\$17,660 30</u>
		<u>\$28,486 36</u>

The undersigned administrators, for the better understanding of credits claimed, make the following additional statement since their report No. 2: They have received and collected from Andres Sena 5,386 ewes at \$1.00 per head, \$5,386.00; which last-mentioned ewes they have divided among the heirs and distributees of the estate.

They have received of Santiago Baca 5,000 ewes at \$1.00 per head, \$5,000.00, distributed in like manner. There remains due a balance due from Andres Sena, \$3,745.71, which they have reduced to a judgment and have assigned to each of the heirs.

Supplemental Report.

To the Honorable Justo R. Armijo, probate judge, Bernalillo county:

334 The administrators of the estate of Jose L. Perea, deceased, respectfully make this supplemental report with reference to the First National Bank of Santa Fé: — stock, which has been received and managed by them under the terms of a will of the deceased ever since his death to the present time, the youngest one of the children of said deceased by his first marriage, Barbara, having, on the 2nd day of last Sept., *having* intermarried with Jacobo Yrisarri and thus discharged from her minority under the terms of said will, the stock of said bank and the dividends thereof not expended in the education of said children, should be distributed in accordance with the terms of said will, which they *due* as follows, to wit:

DEBIT.

They charge themselves as follows:

Four hundred and fifty shares of national bank stock of the First National Bank of Santa Fé of the par value of \$100.00 each...	\$45,000 00
Amount of dividend of above stock on hand at the time of the death of Jose L. Perea...	17,862 00
Amount of dividend accrued since the death of the deceased.....	292 50
Carried forward.....	\$92,112 68

Supplemental report.

Dr.

Brought forward.....	\$92,112 68
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CREDIT.

They take credit as follows:

Amount expended on education, etc., as required by the will.....	\$5,879 54
For receiving \$92,112.68 fees at 2 per cent.....	2,302 86
335 For turning over and disbursing \$92,112.68 at 2 per cent. for fees.....	2,302 86

We have also paid out and distributed to the heirs as follows:

To Jesus M. Perea, bank stock.....	\$3,482 14
To Jesus M. Perea, cash....	2,834 26
To Josefa Perea, bank stock... ..	3,482 14
To Josefa Perea, cash.....	2,834 26
To Soledad Perea, bank stock... ..	3,482 14
To Soledad Perea, cash... ..	2,834 26
To Filomena Perea, bank stock.....	3,482 14
To Filomena Perea, cash.....	2,834 26
To Mariano Perea, bank stock.....	3,482 14
To Mariano Perea, cash.....	2,834 26
To Pedro Perea, bank stock.....	3,482 14
To Pedro Perea, cash.....	2,834 26
To Benicio F. Perea, bank stock ..	3,482 14
To Benicio F. Perea, cash... ..	2,834 26
To Beatriz Perea, bank stock... ..	3,482 14
To Beatriz Perea, cash.....	2,834 26
To Jose L. Perea, bank stock... ..	3,482 14
To Jose L. Perea, cash....	2,834 26
To Cesaria Perea, bank stock... ..	3,482 14
To Cesaria Perea, cash....	2,834 26
To Jacobo Perea, bank stock.....	3,482 14
To Jacobo Perea, cash.....	2,834 26
To Barbara Perea, bank stock... ..	3,482 14
To Barbara Perea, cash... ..	2,834 26
To Jose L. Perea, Second, bank stock.....	1,607 14
To Jose L. Perea, Second, cash.....	1,308 12
To Guadalupe Perea, as heir of Julien Perea, bank stock... ..	1,607 14
To Guadalupe Perea, as heir of Julien Perea, cash.....	1,308 12
	<hr/>
	\$92,112 58

336 All of which is respectfully submitted, and they pray that they may be discharged from the amount of the charges against them in accordance with the credits in their favor contained in said report, and that they be discharged from any further administration of the goods, effects, chattels, and credits in said inventory contained.

J. M. PEREA,
 MARIANO PEREA,
 PEDRO PEREA,

Administrators del Estado Finado Jose L. Perea.

Approved this 11th day of December, A. D. 1886.

J. R. ARMIJO,
Probate Judge.

Recorded by me this 15th day of December, A. D. 1886.

W. H. BURKE,
P. C. and Recorder,
 By M. C. DE BACA, *Deputy.*

Said exhibit being marked and endorsed as follows :

2943. Ex. "O." To be admitted in place of pages 318, &c., Book "E" and subject to correction if there are any mistakes. Filed in my office Jan. 26, 1893. Chas. F. Hunt, clerk.

And thereafter, upon the 14th day of February, A. D. 1893, there was filed in the office of the clerk of said court a motion in the words and figures as follows, to wit :

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

337 PEDRO PEREA, Complainant, }
vs. } No. 2943.
G. W. HARRISON *et als.*, Defendants. }

Now comes the complainant and moves the court for an order confirming the report in the above-stated cause.

N. B. FIELD,
COLLIER & MARRON,
Solicitors for Complainant.

To the defendant G. W. Harrison and his solicitor, W. B. Childers :

You will take notice that we will ask the court at chambers, in the city of Albuquerque, on Friday, the 10th day of February, A. D. 1893, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for the granting of foregoing order.

N. B. FIELD,
COLLIER & MARRON,
Solicitors for Complainant.

I certify that I have this day left a copy of the foregoing motion and notice at the office of W. B. Childers, Esq., with Ed. Medler.

O. N. MARRON.

(Endorsed :) No. 2943. Territory of New Mexico, county of Bernalillo, in the district court. Pedro Perea, administrator *vs.* G. W. Harrison *et al.* Motion to confirm report. Filed in my office February 14, 1893. Chas. F. Hunt, clerk. N. B. Field, Collier & Marron, solicitors for complainant.

338 And thereupon, on the same day, to wit, the 14th day of February, A. D. 1893, there *was* filed in the office of the clerk of said court, complainant's exceptions to said report in the words and figures as follows, to wit :

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court.

PEDRO PEREA, Administrator, }
vs. } No. 2943.
 G. W. HARRISON *et al.* }

Comes now the complainant, in the above-entitled cause, by his solicitors, Neill B. Field and Collier & Marron, and excepts to the report of the master heretofore made in said cause, the said exceptions being based upon the objections to the proposed draft of the report made by the master, and for ground of exception says:

First. That the said master should have found, as a matter of fact, that the said George W. Harrison has not in good faith withheld the estate of Jose L. Perea, 2nd, deceased, from the possession of complainant as administrators, and that he has wrongfully caused this litigation and expenses connected therewith.

Second. That the said master should have found, as a matter of law, that the expense of this litigation, including reasonable solicitors' fees, are chargeable to the portion of the estate belonging to the said George W. Harrison, and that the said George W. Harrison should pay over to the said complainants, as administrators, statutory fees on the portion remaining in his hands, and the solicitors' fees and other expenses of this litigation.

In all such matters and things the said complainant hereby
 339 excepts and prays that the said report be confirmed, and that in such confirmation it be amended in conformity with the above exceptions.

N. B. FIELD,
 COLLIER & MARRON,
Solicitors for Complainant.

(Endorsed :) No. 2943. Territory of New Mexico, county of Bernalillo, in the district court. Pedro Perea, adm'r, *vs.* G. W. Harrison, *et al.* Exceptions. Filed in my office Feb. 14, 1893. Chas. F. Hunt, clerk. N. B. Field, Collier & Marron, solicitors for complainant.

And thereafter, on the 15th day of February, A. D. 1893, there was filed in the office of the clerk of said court, exceptions to report of master by defendant, said exceptions being in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, }
 County of Bernalillo. }

In the District Court, Second Judicial District.

PEDRO PEREA, Administrator, }
 vs. } No. 2943.
 G. W. HARRISON *et al.* }

Exceptions taken by the above-named defendants to the report of the master in chancery, to whom this cause was referred to take proof, etc., by an order made herein on, etc., and which report bears date on, etc.

First exception. For that the master has in and by his fourth finding of fact charged that Guadalupe Perea, deceased, as guardian of Jose L. Perea, Second, deceased, from time to time there-
 340 after became possessed of certain money and personal property belonging to said estate of said minor, which said property was as stated in said report. Defendant- excepts to said fourth finding of fact because the items charged therein are not shown by the evidence to have been so received, and the said finding is wholly unsupported by the evidence, and because said finding of fact does not give the said Guadalupe Perea credit for moneys paid out and expended by her for and on behalf of the said minor.

Second exception. For that the said master has in and by his fifth finding of fact failed to allow the said Guadalupe Perea de Harrison, deceased, and said defendant credit for the expense of two trips taken for the benefit of the minor's health and for a sufficient amount per month for the support and maintenance of said child, and has failed to allow other credits shown by the evidence, and because said finding as made is not in accordance with the evidence, and said guardian and defendant being entitled to additional credits on that account.

Third exception. For that the said master's eighth finding of fact is not sustained by the evidence, and that from the date of the appointment of said Guadalupe Perea as administratrix of the estate of said deceased minor to the time of her death, she refused to account to or co-operate with her co-administrator, Pedro Perea, complainant in this cause, the fact being that she was entitled to a settlement of her accounts as guardian before turning over said estate.

Fourth exception. For that the ninth finding of fact by the said master is not sustained by the evidence, and that the evidence does not show that the said Geo. W. Harrison has, from the date of said
 341 appointment as administrator of the estate of Guadalupe Perea to the present time, refused and still refuses to account to Pedro Perea, surviving administrator of the estate of Jose L. Perea, 2d, and does not show that he retains said estate, mingling the funds with his own, etc., as in said finding alleged.

Fifth exception. For that the tenth finding of fact that the said Guadalupe Perea acted under the advice of her husband, George W.

Harrison, and he acted for his wife in the management and control of said estate in making reports to the probate court of the condition thereof, is not sustained by the evidence and is wholly immaterial.

Sixth exception. For that the said eleventh finding of fact by the said master is not sustained by the evidence and that no order was ever made by the probate court authorizing or requiring either the said George W. Harrison or Guadalupe Perea de Harrison to loan out or invest the funds of said minor.

Seventh exception. For that the law did not require the guardian to keep the ward's funds invested in sheep and bank stock, but that it was their duty to change hazardous investments into cash, or other safer investments.

Defendants except to the said master's finding of law as follows:

First. For that the first finding of law, that the powers of Guadalupe Perea de Harrison, as guardian of Jose L. Perea, Second, ceased immediately upon the death of the said ward, for the reason that such is not the law.

Second. For that the second finding of law, to wit, that after the death of said Jose L. Perea, Segundo, the guardian held said estate as administratrix and not as guardian, is not the law, and insists that she held the estate as guardian until her accounts were
342 finally settled.

Third. For that the third finding of law, as to what the statute provides is incorrectly stated, the statute only holding the guardian liable for failure to invest and loan out funds where an order is made by the court requiring an investment.

Fourth. For that the fourth finding of law is not the law, to wit: That after the death of the said Guadalupe Perea de Harrison, Pedro Perea, the surviving administrator, was the only person entitled to the possession of the estate of the said minor, and that George W. Harrison by retaining the possession of said estate and refusing to deliver the same over to said administrator became liable for the proper management and control thereof, in his proper capacity, and insists that any claim whatever, if any, on account of the management and control and possession of said estate by complainant was only a charge against the estate of Guadalupe Perea de Harrison in the hands of her administrator, and no charge against the administrator personally.

Fifth. For that the fifth finding of law by said master, to wit, the said master has charged up interest by striking balances more frequently than the law warrants, and that he has charged too much interest for that reason upon the estate, and that the same, or funds, both principal and interest, is to be due, and the amount which complainant is entitled to receive is in excess of the amount shown by the evidence, and that the whole finding is not supported by the evidence.

Sixth. For that the said master has failed to allow the defendant all the credits to which he is entitled, and that the evidence shows additional credits.

Seventh. For that the said master has found that Pedro Perea, as

343 administrator of the estate of Jose L. Perea, 2nd, is entitled to the statutory commission for receiving and paying out the whole balance, and defendant insists that the law is that he is only entitled to commission upon funds and property actually received and disposed of by him.

Eighth. For that by the eighth finding of law the said master finds that Pedro Perea is entitled to receive commissions upon $\frac{2}{6}$ of said balance, as such administrator, as shown by the statement contained in said finding.

Ninth. For that the said master has recommended that the said George W. Harrison be decreed to pay over to Pedro Perea $\frac{2}{6}$ of the sum shown to be due on account of said minor's estate, and the statutory commissions upon the remaining $\frac{1}{6}$, upon the ground that there has not been a full accounting of said estate in this case, and that the said Pedro Perea, as such administrator, is not entitled to commissions upon $\frac{1}{6}$ belonging to said George W. Harrison, or any part thereof, no part of which has he received, and no part of which is he called upon to disburse.

Tenth. For that the same exception applies to the second recommendation as to the first recommendation.

Eleventh. For that by his third recommendation the said master recommends that the said George W. Harrison be decreed to pay a solicitor's fee of \$5,000.00 to the complainant and the master a fee of \$1,500.00, because there is no authority in law authorizing a decree for complainant's solicitor's fees in this case, and because both of said amounts, to wit, the solicitor's fee of \$5,000.00 and the master fee of \$1,500.00, are excessive, even if authorized by law, and insists that the master's fee should be divided equally between the parties to this suit, or in proportion to the interests of the respective parties, and should come out of the estate before any division
344 of the same, and that no part of solicitor's fee should be charged against these defendants or any of them.

Twelfth. For that the said master has considered the testimony of the witness Pedro Perea and Mariano Perea, taken at the last sitting of the master, during the absence of solicitor for defendants, and when they could not be present, and insists that said cause should have been adjourned until defendants' solicitor could have been present.

W. B. CHILDERS,
Solicitor for Defendants.

(Endorsed :) No. 2943. Territory of New Mexico, county of Bernalillo. In the district court, second judicial district. Pedro Perea, administrator, vs. George W. Harrison *et als*. Exceptions to report of master. Filed in my office February 15th, 1893. Chas. F. Hunt, clerk. William B. Childers, solicitor for defendants.

And thereafter at a regular term of the district court of the second judicial district of the Territory of New Mexico, in and for the county of Bernalillo, in said district, begun and held on the 6th day of March, 1893, at the court-house in said county, the following pro-

ceedings among others were had on the tenth day of the said term, it being the 16th day of March, A. D. 1893.

Present: The Honorable William D. Lee, associate justice
345 of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof, presiding.

PEDRO PEREA, Administrator, &c.,	} No. 2943. Chancery.
<i>vs.</i>	
G. W. HARRISON, Administrator, <i>et al.</i>	

And now come counsel for parties and submit arguments on exceptions to master's report, which arguments are heard and taken under advisement by the court.

And thereupon — the 90th day of the said term, it being the 19th day of June, A. D. 1893, the following proceedings among others were had and entered of record, to wit: (Said record entry being a copy of decree of court, filed in the office of the clerk of said court on said date.)

PEDRO PEREA, Administrator, &c.,	} No. 2943. Chancery.
<i>vs.</i>	
GEORGE W. HARRISON, Administrator, <i>et als.</i>	

This cause having heretofore come on for final hearing upon the pleadings and report of Karl A. Snyder, special master in chancery, to whom this cause was referred by this court by an order, heretofore entered for the purpose of taking proofs as to the truth of the material allegations of said bill of complaint, and for report, with his opinion thereon, and the proofs annexed to said report, which said report was filed in this court on February 14, 1893, and the exceptions of said parties complainant and defendant, to the said report, and said
346 exceptions *have* been argued by counsel, Mr. N. C. Collier and Mr. N. B. Field appearing for said complainant, and Mr. W. B. Childers for said defendants, the court, after due deliberation, being now fully advised in the premises, doth overrule the said exceptions and confirm the said report, except as the same is hereby amended and modified, to wit: the court finds that there was due to said complainant, Pedro Perea, as surviving administrator of the estate of Jose L. Perea, 2d, deceased, from said defendant, George W. Harrison, on the 26th day of October, A. D. 1892, the sum of thirty thousand, three hundred and sixty-one dollars and twenty-nine cents (\$30,361.29), which said sum, with interest at the rate of six per cent. per annum from said date until today, to wit: June 19, 1893, now amounts to thirty-one thousand, five hundred and forty-five dollars and thirty-two cents; that said complainant is entitled to counsel fees out of said fund, which counsel fees are hereby fixed at the sum of \$5,000.00; that said complainant is entitled to the statutory commission of ten per cent. on the first three thousand dollars and five per cent. on the balance of said fund as his compensation as such administrator, which said commissions amount,

at this date, to the sum of seventeen hundred and twenty-seven dollars and twenty-six cents, that there is due to said defendant, George W. Harrison, from said fund, as administrator of the estate of Guadalupe P. de Harrison, thirteen twenty-sixths, and as owned by purchase of the interest of Filomena P. de Otero, Cesaria P. de Hubbell, and of J. M. Perea, heirs of Jose L. Perea, Segundo, in the said estate of Jose L. Perea, Segundo, three twenty-sixths, and as guardian of Grover William Harrison, one twenty-sixth of the said estate, in all, seventeen twenty-sixths of such balance

of said fund as remains after deducting the said counsel fees and commission hereby allowed therefrom, to wit, 347 the sum of sixteen thousand two hundred and twenty-seven dollars and nineteen and $\frac{4}{3}$ cents, and that the other of the heirs named in said report are each entitled to one twenty-sixth of said balance after such deductions, to wit, the sum of nine hundred and fifty-four dollars and fifty-four and $\frac{1}{3}$ cents each; that said defendant, George W. Harrison, may, instead of turning over to said administrators the full sum so found due as aforesaid, retain the amount so found due him from said estate, as aforesaid, to wit, the said sum of sixteen thousand two hundred and twenty-seven dollars and nineteen and $\frac{4}{3}$ cents, and shall pay over the balance of said fund, to wit, the sum of fifteen thousand three hundred and eighteen dollars and twelve and $\frac{9}{13}$ cents, to said complainant, that the costs of this suit, including the sum of one thousand dollars, which is hereby allowed to said special master, shall be paid by said defendant, G. W. Harrison.

And with the foregoing amendments and modifications, the court doth confirm and ratify the said report of said special master, and adopt his findings as the findings of this court.

It is, therefore, ordered, adjudged and decreed and this court, by virtue of the power and authority in it vested, doth order, adjudge and decree that said defendant, Geo. W. Harrison, pay over within five days from this date to the said complainant, Pedro Perea, administrator of the estate of Jose L. Perea, Segundo, the sum of fifteen thousand three hundred and eighteen dollars and twelve and $\frac{9}{13}$ cents, being the balance of said fund of thirty-one thousand five hundred and forty-five dollars and thirty-two cents, after deducting the amount found due, to said defendant Harrison,

348 from said estate as aforesaid, and which he is hereby authorized to retain.

It is further ordered, adjudged and decreed that out of the moneys so decreed to be paid to said complainant from said defendant George W. Harrison, the said complainant shall retain the said sum of five thousand dollars hereby allowed as counsel fees, to be by him paid to his solicitors and the said sum of seventeen hundred and twenty-seven dollars and twenty-six cents, his statutory commissions hereby allowed, and shall distribute the balance of said fund to the heirs of Jose L. Perea, Segundo as follows:

To Jose L. Perea, nine hundred and fifty-four dollars and fifty-four and $\frac{1}{3}$ cents; to Benicio F. Perea, nine hundred and fifty-four dollars and fifty-four and $\frac{1}{3}$ cents; to Mariano Perea, nine hundred

and fifty-four dollars and fifty-four and $\frac{1}{13}$ cents; to Jacobo Perea, nine hundred and fifty-four dollars and fifty-four and $\frac{1}{13}$ cents; to Pedro Perea, nine hundred and fifty-four dollars and fifty-four $\frac{1}{13}$ cents; to Beatriz P. de Armijo, nine hundred and fifty-four dollars and fifty-four and $\frac{1}{13}$ cents; to Soledad P. de Castillo, nine hundred and fifty-four dollars and fifty-four and $\frac{1}{13}$ cents; to Josefa P. de Castillo, nine hundred and fifty-four dollars and fifty-four and $\frac{1}{13}$ cents, and to Barbara P. de Yrisarri, nine hundred and fifty-four dollars and fifty-four and $\frac{1}{13}$ cents.

It is further ordered that said administrator do bring into court vouchers showing the distribution of said fund in accordance with this decree.

It is further ordered, adjudged and decreed that said defendant, George W. Harrison, pay the costs of this suit to be taxed, including the sum of one thousand dollars, which is hereby allowed to said special master Karl A. Snyder for his services herein, and that in default of payment thereof, or of the said other moneys
349 above adjudged, to be paid by him, said defendant, within the time limited, that execution may issue therefor.

And thereafter, upon the 26th day of June, A. D. 1893, there was issued out of the office of the clerk of said court an execution in the words and figures as follows, to wit:

The Territory of New Mexico to the sheriff of Bernalillo county, Greeting:

You are hereby commanded, that of the goods and chattels, lands and tenements, of George W. Harrison, in your county, you cause to make the sum of fifteen thousand three hundred and eighteen dollars and $12\frac{2}{3}$ cents damages, and one thousand and thirty-five and $\frac{2}{3}$ cents cost of suit, which by the judgment and decree of our district court, within and for the county of Bernalillo and Territory aforesaid, at the March term thereof, A. D. 1893, Pedro Perea, administrator of the estate of Jose L. Perea, Second, recovered against the said George W. Harrison, with interest thereon from the 19th day of June, A. D. 1893, until paid, at the rate of six per cent. per annum, and also the costs that may accrue, and due return make of your proceedings on this writ before our said district court, within sixty days from receipt hereof, to render, etc. And have you then and there this writ.

Witness the Honorable William D. Lee, associate justice of the supreme court of the Territory of New Mexico, and judge
[SEAL.] of the second judicial district court thereof, and the seal of said district court, this 26th day of June, A. D. 1893.

CHAS. F. HUNT, Clerk.

350 (Endorsed:) No. 2943. District court, county of Bernalillo. Pedro Perea, administrator, etc., vs. G. W. Harrison *et al.* Execution. Collier & Marron and Neill B. Field, attorneys for plaintiff.

Sheriff levy and collect—

Damages	\$15,318 12 ⁹ / ₁₃
Costs	
Clerk	35 90
Sheriff	
Master	1,000 00
Total	\$16,354 02 ⁹ / ₁₃

with interest at 6 per cent. per annum from June 19th, '93, and your collection fees.

CHAS. F. HUNT, *Clerk*.

And thereafter, upon the 12th day of July, A. D. 1893, there was filed in the office of the clerk of said court a motion by defendants in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

District Court.

PEDRO PEREA, Administrator, }
vs. }
GEORGE W. HARRISON *et al.* }

Now comes the defendant, George W. Harrison, by W. B. Childers, his solicitor, and moves the court to grant him an appeal in the above-entitled cause and said defendant files herewith his appeal bond for supersedeas, and also moves the court to make an
351 order superseding execution in said cause, pending the appeal, and recalling the execution already issued.

W. B. CHILDERS,
Solicitor for Defendant.

(Endorsed :) No. 2943. District court, Bernalillo county. Pedro Perea, administrator, *vs.* George W. Harrison *et al.* Motion for an appeal and supersedeas. Filed in my office July 12, 1893. Chas. F. Hunt, clerk.

And thereupon on the same day, to wit, the 12th day of July, A. D. 1893, the following proceedings among others were had and entered of record, to wit:

PEDRO PEREA, Adm'r, etc., }
vs. } No. 2943.
G. W. HARRISON, Adm'r, *et al.* }

Now, comes defendant, George W. Harrison, by W. B. Childers, his solicitor, and moves the court to grant him an appeal in the above-entitled cause, and files his appeal bond for supersedeas, and moves the court to make an order superseding execution already issued herein, and the court being fully advised doth grant said ap-

peal, and motion for supersedeas and approves the supersedeas bond filed herein. It is further ordered that the execution heretofore issued be recalled and that citation issue to plaintiffs herein directing them to be and appear before the supreme court of the Territory of New Mexico on the first day of a term thereof to be begun and held on the last Monday of July, A. D. 1894, at Santa Fe, to answer the appeal herein.

352 And heretofore on the same day, to wit, the 12th day of July, A. D. 1893, there was filed in the office of the clerk of said court an appeal bond, said appeal bond and approval of court thereon being in the words and figures as follows, to wit:

Know all men by these presents, that we, George W. Harrison as principal, and M. S. Otero and W. S. Strickler as his sureties, are held and firmly bound unto Pedro Perea, surviving administrator of the estate of Jose L. Perea, Second, deceased, in the penal sum of thirty thousand six hundred and thirty-six and $\frac{25}{100}$ dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents.

Signed, sealed and dated this 8th day of July, A. D. 1893.

The condition of the above and foregoing obligation is such, that whereas the district court of the second judicial district of the Territory of New Mexico, held in and for the county of Bernalillo, did on the 19th day of June, A. D. 1893, render a certain decree in a certain cause pending in said court, wherein the said Pedro Perea, as administrator, as aforesaid, was complainant, and the said George W. Harrison, and others mentioned in the pleadings and decree in said cause, were defendants, the said decree being against the said George W. Harrison for the sum of fifteen thousand three hundred and eighteen and $\frac{12}{100}$ dollars, together with interest and costs; and whereas, the said George W. Harrison prays an appeal of the said cause from the said district court to the supreme court of the Territory of New Mexico:

Now, therefore, if the said appellant, Geo. W. Harrison, shall prosecute his appeal with due diligence to a decision in the supreme court, and if the decision appealed from be affirmed, 353 or the appeal be dismissed and the said appellant shall perform the decree of the said district court in that case, and pay all costs and damages which may be judged or decreed against him upon the said appeal, then this obligation to be null and void, otherwise to remain in full force and effect.

G. W. HARRISON. [SEAL.]
M. S. OTERO. [SEAL.]
W. S. STRICKLER. [SEAL.]

TERRITORY OF NEW MEXICO,)
County of Bernalillo.)

Before me, the undersigned authority, on this, the 11th day of July, A. D. 1893, personally came and appeared George W. Harrison and M. S. Otero and W. S. Strickler, whose names are signed to the above and foregoing bond, as parties thereto, who, each for him-

self, acknowledged to me that he voluntarily executed the same for the purpose therein mentioned, and that the same was his act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

H. J. EMERSON,
Notary Public.

[SEAL.]

TERRITORY OF NEW MEXICO, }
County of ———. }

M. S. Otero and W. S. Strickler and ———, sureties on the above and foregoing bond, having been severally sworn according to law, each upon his oath, says that he is worth the sum set opposite to his name below in property situate in said Territory, over and above his just debts and liabilities, and property exempt from execution and forced sale.

Twenty thousand \$20,000.00.

M. S. OTERO.

Eleven thousand \$11,000.00.

W. S. STRICKLER.

354 Subscribed and sworn to before me this 11th day of July,
A. D. 1893.

[SEAL.]

H. J. EMERSON,
Notary Public.

Examined and approved by me this 12th day of July, A. D. 1893.

WILLIAM D. LEE,
Judge Second Judicial District Court.

(Endorsed:) No. 2943. Territory of New Mexico, county of Bernalillo, in the district court, second judicial district. Pedro Perea, administrator, complainant, *vs.* George W. Harrison *et al.*, defendant. Appeal bond. Filed in my office July 12, 1893. Chas. F. Hunt, clerk. Wm. B. Childers, solicitor for defendant.

And thereafter, upon the 29th day of July, A. D. 1893, execution heretofore issued in said cause was returned to and filed in the office of said clerk with the sheriff's return thereon in the words and figures as follows, to wit:

I hereby return this writ unsatisfied by order of the court, July 20th, 1893.

JACOBO YRISARRI, *Sheriff*,
By J. S. GARCIA, *Deputy*.

Filed in my office July 29, 1893.

CHAS. F. HUNT, *Clerk*.

355 TERRITORY OF NEW MEXICO, }
Second Judicial District, County of Bernalillo. }

I, Chas. F. Hunt, clerk of the second judicial district court of the Territory of New Mexico, in and for the county of Bernalillo, do

hereby certify that the foregoing is a full, true and complete copy and transcript of the pleadings and proceedings in a cause lately pending in the said district court, in which Pedro Perea, sole surviving administrator of the estate of Jose L. Perea, Second, and Pedro Perea, individually, was complainant, and George W. Harrison, individually and as administrator of the estate of Guadalupe Perea de Harrison *et al.*, were defendants, as the same remain of record in my office.

Witness my hand and the seal of said court this 28th day of October, A. D. 1893.

[SEAL.]

CHAS. F. HUNT, *Clerk.*

356 And afterwards, to wit, on the thirtieth day of July, 1894, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an assignment of errors in said cause; which said assignment is in the words and figures following, to wit:

In the Supreme Court of the Territory of New Mexico, July Term, A. D. 1894.

PEDRO PEREA, Administrator, &c., Appellee,	}
<i>vs.</i>	
GEO. W. HARRISON, Administrator, &c., <i>et al.</i> , Appellant.	}

Assignment of Errors.

Now comes the appellant in the above-entitled cause, and assigns as errors by the court below, the following:

1st. The court erred in sustaining the exceptions for impertinence filed by the complainant to the answer of the appellant. (See Trans. pp. 47, 87 and 89 folio 303.)

2nd. The court erred in sustaining the appellee's demurrer to the cross-bill filed by the appellant in said cause. (Trans. p. 83.)

3rd. The court erred in rendering a decree in said cause without disposing of the demurrer filed by appellee to the cross-bill filed in said cause by appellant.

4th. The court erred in rendering a decree upon the evidence taken and reported by the special master in said cause, Karl A. Snyder, because there does not appear to have been any order made by the court referring said cause to the said Snyder and authorizing him to take evidence, make findings and report the same.

5th. The court erred in overruling the exceptions filed to the master's report by the appellant. (See Trans. p. 339.)

357 6th. The court erred in overruling the first exception to the finding of fact by the master, charging Guadalupe Perea, deceased, as guardian of Jose L. Perea, 2nd, with the items therein mentioned as having been received by her, when the evidence wholly fails to show the receipt thereof, and there being no evidence whatever to sustain said finding, and fails to credit the said guardian

with moneys paid out and expended by her on behalf of the said minor.

7th. The court erred in overruling the second exception to finding of fact by said master, which said exception was taken to the 5th finding of fact wherein the said master failed to allow the said guardian, and the defendant, credit for the expense of two trips taken for the benefit of the minor's health, and a sufficient amount per month for the support and maintenance of said minor, and failed to allow other credits shown by the evidence, and because the said finding is not supported or in accordance with the evidence.

8th. The court erred in overruling the third exception to the findings of fact of said master, which said exception was taken to the 8th finding of fact, because said finding — that the said Guadalupe Perea, as administratrix of the estate of the said minor, refused up to the time of her death to account to or co-operate with the complainant, her co-administrator; the fact as shown by the evidence being that she was entitled to a settlement of her accounts as guardian before turning over said estate.

9th. The court erred in overruling appellant's 4th exception to said findings of fact, said exception being taken to the 9th finding of fact by said master, and that the defendant G. W. Harrison, from the date of his appointment as administrator of the estate of Guadalupe Perea, deceased, has refused and still refuses to account to the complainant as surviving administrator of the estate of Jose L. Perea, 2nd, and because the evidence does not show that he retains said estate commingling the funds with his own, as found by said master, said finding being wholly unsupported by the evidence.

10th. The court erred in overruling the fifth exception to the said master's tenth finding of fact, that the said Guadalupe Perea acted under the advice of her husband, George W. Harrison, the defendant, and that he acted for his wife in the management and control of said estate in making reports to the probate court of the condition thereof, said finding of fact being wholly unsustained by the evidence and being immaterial.

11th. The court erred in overruling appellant's sixth exception to the said master's eleventh finding of fact, wherein said master finds that neither Guadalupe Perea, deceased, nor the defendant Harrison made any effort to loan the funds of said estate or to procure an order for that purpose, as being unsustained by the evidence and wholly immaterial.

12th. The court erred in overruling appellant's seventh exception to the said master's twelfth finding of fact, because the said finding is wholly immaterial in that the law did not require or justify the guardian in keeping the minors' funds invested in sheep and bank stock.

13th. The court erred in overruling appellant's first exception to the master's findings of law, that the powers of the guardian of Jose L. Perea, 2nd, ceased immediately upon the death of said ward, as not in accordance with the law.

14th. The court erred in overruling the appellant's second exception to the master's finding of law, that after the death of the said ward, the guardian held said estate as administratrix and not
359 as guardian, and appellant insists that she held said estate as guardian until her accounts were finally settled.

15th. The court erred in overruling the appellant's second exception to the master's finding of law, as to what the statute provide, the guardian being liable for failure to invest and loan out funds only when an order is made by the probate court requiring it to be done as appellant insists.

16th. The court erred in overruling appellant's exception to the master's fourth finding of law, that the surviving administrator was the only person entitled to the possession of the estate of the deceased minor, and that the said defendant by retaining possession of said estate became liable for the proper management and control thereof in his individual capacity; and appellant insists that whatever claim, if there was any, on account of management and control and possession of said estate, by the said Guadalupe Perea de Harrison, was a charge against her estate in the hands of her administrator and no charge against the administrator personally.

17th. The court erred in overruling said appellant's exception to said master's fifth finding of law, to wit, the said master has charged up interest by striking balances more frequently than the law warrants, and that he has charged too much interest for that reason upon the estate, and that the same, or funds, both principal and interest, is to be due, and the amount which complainant is entitled to receive is in excess of the amount shown by the evidence, and that the whole finding is not supported by the evidence.

18th. The court erred in overruling appellant's sixth exception to said master's finding of law, wherein the said master has failed to
360 allow the defendant all the credit to which he is entitled by law, and which the evidence under the law shows him to be entitled to.

19th. The court erred in overruling the appellant's seventh exception to the said master's finding of law, holding that the said complainant as administrator of the estate of Jose L. Perea, 2nd, is entitled to the statutory commission for receiving and paying out the whole balance decreed against the defendant, and appellant insists that the law is that he is only entitled to commissions upon funds and property actually received and disposed of by him.

20th. The court erred in overruling appellant's eighth exception to the eighth finding of law of said master, wherein said master finds that the complainant is entitled to receive commission upon seven twenty-sixths ($\frac{7}{26}$) of said balance as such administrator, as shown by the statement contained in said finding.

21st. The court erred in overruling appellant's ninth exception to the first recommendation of said master, wherein the said master recommended that the said George W. Harrison be decreed to pay over to Pedro Perea nine twenty-sixths ($\frac{9}{26}$) of the sum shown to be due on account of said minor's estate, and the statutory commissions upon the remaining $\frac{17}{26}$, upon the ground that there has not

been a full accounting of said estate in this case, and that the said Pedro Perea, as such administrator, is not entitled to commissions upon $\frac{1}{2}$ of $\frac{7}{8}$ belonging to said George W. Harrison, or any part thereof, no part of which has been received, and no part of which is he called upon to disburse.

22nd. The court erred in overruling the tenth exception to the master's second recommendation, to wit, that the said court should decree that the said Pedro Perea, as administrator, distribute nine

twenty-sixths ($\frac{9}{26}$) of said balance found by said master to be
361 paid to him by the said George W. Harrison, to the heirs of said Jose L. Perea, 2nd, less his statutory commission for receiving and paying out the same. Appellant insists that there not having been a full accounting of the estate, said decree in particular was erroneous, and said recommendation wrong as a matter of law.

23rd. The court erred in overruling appellant's 11th exception to the third recommendation of the said master, wherein the said master recommends that the said defendant be decreed to pay a solicitor's fee of five thousand dollars to the complainant, and a master's fee of fifteen hundred dollars. Appellant insists that there is no law authorizing a decree for complainant's solicitor's fees in this case, and that the said fees for said solicitor and master are excessive, even if authorized by law, and appellant further insists, that the said recommendations are wholly unsustainable, because there is no evidence taken in said cause as to the value of the services rendered for which the said solicitor's fee was allowed by the court, or of the services performed by said master, and because it is apparent from the record that said amounts were excessive, even if warranted by law.

24th. The court erred in overruling appellant's twelfth exception to the action of the said master in considering the testimony of the witnesses, Pedro Perea and Mariano Perea, taken at the last sitting of the master during the absence of defendant's solicitor and when he could not be present, and that the refusal to adjourn the taking of said testimony was an abuse of discretion by the said master.

25th. The court erred in rendering a decree in said cause in accordance with the findings of fact and law above excepted to and
362 erred in rendering any decree whatever in said cause before there had been a full accounting as to the said estate and without some disposition of the demurrer to the cross-bill filed in said cause, and upon the testimony taken by said master without any order appointing him.

Wherefore appellant prays that said decree be reversed, vacated, set aside and held for naught, and that said cause be remanded to the court below with instructions to proceed with the same.

W. B. CHILDERS,

Solicitor for Appellant.

363 And afterwards, at a regular term of the supreme court of the Territory of New Mexico begun and held at Santa Fé, New Mexico, the seat of government of said Territory, on the last Monday in July, 1894, on the nineteenth day of said term, the same

being Wednesday, August 22, 1894, the following, among other, proceedings were had, to wit:

PEDRO PEREA, Administrator, Appellee,	} 575. Appeal from Dis-
<i>vs.</i>	
GEORGE W. HARRISON, Administrator,	
<i>et al.</i> , Appellants.	trict Court of Bernalillo County.

This cause, coming on for hearing upon the transcript of record, assignment of errors, and briefs of counsel on file, is argued by W. B. Childers, Esq., for appellants, and N. B. Field, Esq., for appellees, and submitted to the court, and the court, not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, at a regular term of the supreme court of the Territory of New Mexico begun and held at Santa Fé, New Mexico, the seat of government of said Territory, on the last Monday in July, 1895, on the sixth day of said term, the same being Saturday, August 3, 1895, the following, among other, proceedings were had, to wit:

PEDRO PEREA, Administrator, Appellee,	} 575. Appeal from
<i>vs.</i>	
GEORGE W. HARRISON, Administrator, <i>et al.</i> ,	
Appellants.	Bernalillo County.

This cause, coming on for hearing upon the transcript of record, assignment of errors, and briefs of counsel on file, is argued by W. B. Childers and E. A. Fiske, Esquires, for said appellants and by N. B. Field, Esquire, for said appellee, and submitted to the court, and the court, not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, at the regular term of said supreme court last aforesaid, on the twenty-fifth day thereof, the same being Monday, August 26, 1895, the following, among other, proceedings were had, to wit:

364 PEDRO PEREA, Administrator, Ap-	} 575. Appeal from
pellee,	
<i>vs.</i>	
GEORGE W. HARRISON, Administrator,	Bernalillo County.
<i>et al.</i> , Appellants.	

This cause having been heretofore argued by counsel for the respective parties and taken under advisement by the court, the court, being now fully advised of and concerning the same, doth order, adjudge, and decree that the decree of the district court in the county of Bernalillo herein be, and the same hereby is, modified as hereinafter stated, and that the said decree as so modified be, and the same hereby is, affirmed against the appellant George W. Harrison and against the sureties upon his supersedeas bond herein,

Willard S. Strickler and Mariano S. Otero, in manner following—that is to say :

It appearing to the court that the special master in this cause found that on the 26th day of October, 1892, there was in the hands of the defendant George W. Harrison the sum of thirty thousand three hundred and sixty-one dollars and twenty-nine cents, and that the court below in its decree found that on the date thereof the said sum, with interest calculated to the nineteenth day of June, 1893, the date of said decree, amounted to the sum of thirty-one thousand five hundred and forty-five dollars and thirty-two cents, it is found by this court that the said defendant, George W. Harrison, should be charged with interest upon said sum up to this twenty-sixth day of August, 1895, amounting to the sum of forty-three hundred and twenty-four dollars and forty-five cents, and that therefore the said defendant is chargeable as of this date of the sum of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents.

It is further found that the solicitors for complainant herein should be allowed for their services in this cause ten per cent. upon the amount so remaining in the hands of said defendant, George W. Harrison, amounting to the sum of thirty-five hundred and eighty-six dollars and ninety-seven cents.

It is further found that the said Pedro Perea as administrator is entitled to the statutory commission upon the sum of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents, which amounts to the sum of nineteen hundred and forty-three dollars and forty-eight cents ; and it is further found that the compensation of the special master herein be reduced to the sum of five hundred dollars.

The court further finds that the said solicitors' fee, the said commission for said administrator, the said special master's fee, and all the costs of this cause in this court and in the court below should be paid out of said fund, and that of the remainder the said
365 defendant, George W. Harrison, may retain in his possession seventeen twenty-sixth parts thereof, and that he shall pay over to said Pedro Perea, as administrator of Jose Leandro Perea, deceased, the remaining nine twenty-sixths, to be distributed to the heirs-at-law of the said Jose Leandro Perea, Segundo, as follows :

To Jose L. Perea, one-ninth thereof ;

To Benicio F. Perea, one-ninth thereof ;

To Mariano Perea, one-ninth thereof ;

To Jacobo Perea, one-ninth thereof ;

To Pedro Perea in his own right, one-ninth thereof ;

To Beatriz Perea de Armijo, one-ninth thereof ;

To Soledad Perea de Castillo, one-ninth thereof,

And to Barbara Perea de Yrisarri, one-ninth thereof.

Wherefore it is considered, adjudged, and decreed by the court that the defendant George W. Harrison pay into the office of the clerk of this court within thirty days from this date a sum sufficient to pay all the costs of this action, both in this court and in the court below, which costs shall be forthwith taxed by the clerk of this court,

and shall include a solicitors' fee of three thousand five hundred and eighty-six dollars and ninety-seven cents and a special master's fee of five hundred dollars; that the said George W. Harrison likewise pay to the said Pedro Perea, to be retained by him as commission for his services as administrator, the sum of nineteen hundred and forty-three dollars and forty-eight cents; and that, deducting the said payments on the said sum of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents, he pay over to said Pedro Perea as such administrator nine twenty-sixths of the remainder within a like period of thirty days from this date, and that in default of such payment by said Harrison an execution of *fiery facias* issue out of this court against the said George W. Harrison and the said Willard S. Strickler and Mariano S. Otero, the sureties upon his supersedeas bond in this cause, directed to the sheriff of any county in the Territory of New Mexico which may be designated by the solicitors for the complainant herein, for the amount so decreed to be paid as hereinbefore set out, and in case resort is had to such execution *fiery facias* to enforce the collection and payment of said sums of money all costs and interest accruing thereon shall be paid by said George W. Harrison, Willard S. Strickler, and Mariano S. Otero, and no part thereof shall be chargeable against the said fund.

It is further ordered, adjudged, and decreed by the court that upon the payment to the clerk of this court of the several sums of money hereinbefore decreed to be paid to him the said clerk forthwith distribute the same to the parties entitled thereto and
366 take their respective receipts therefor, interest to run on all sums hereinbefore provided for from this date until paid at six per cent. per annum.

August 26th, 1895.

N. B. LAUGHLIN,

Associate Justice, Acting in the Absence of the Chief Justice.

And afterwards, at the regular term of said supreme court last aforesaid, on the twenty-seventh day thereof, the same being Wednesday, August 28, 1895, the following, among other, proceedings were had, to wit:

PEDRO PEREA, Administrator, Appellee,)	575. Appeal from Bernalillo County.
vs.	
GEORGE W. HARRISON, Administrator,)	
et al., Appellants.)	

On motion of said appellant, George W. Harrison, by his solicitor, W. B. Childers, Esq., it is ordered by the court that the time within which said appellant was directed to pay over certain moneys remaining in his hands as administrator, by decree of this court made and entered of record upon a former day of the present term, be, and the same hereby is, extended until the tenth day of October, 1895.

And afterwards, at the regular term of said supreme court last aforesaid, on the fortieth day thereof, the same being Monday, October 21, 1895, the following, among other, proceedings were had, to wit:

PEDRO PEREA, Administrator, Appellee,	} 575. Appeal from Bernalillo County.
<i>vs.</i>	
GEORGE W. HARRISON, Administrator, <i>et al.</i> , Appellants.	

Now comes the defendant and appellant Geo. W. Harrison and files the power of attorney of the National Surety Company of Kansas City, Missouri, appointing C. H. Young its attorney-in-fact to accept service for said company and authorizing the service upon said Young under the provisions of the act of Congress authorizing the giving of bond and recognizances in judicial proceedings and in other cases by surety companies, and also files the certificate of the Attorney General of the United States as to the solvency of said company, as required by said act, and said appellant and defendant also asks the court to make findings of fact in said cause, as required by law, for the purpose of enabling the said appellant to appeal said cause to the Supreme Court of the United States, and
367 further asks the court to approve said bond — grant said appeal, after making said findings, and to grant him an order superseding the decree rendered in said cause, and appellant also files an affidavit showing the jurisdiction on appeal of said Supreme Court of the United States: all of which matters the court takes under advisement until counsel for the appellant and appellees can be heard as to said findings of fact and the counsel for appellees can be heard on objections to the approval of the bond tendered.

And afterwards, at the regular term of said supreme court last aforesaid, on the forty-first day thereof, the same being Tuesday, October 22, 1895, the following, among other, proceedings were had, to wit:

PEDRO PEREA, Administrators, etc., Ap- pellee,	} 575. Appeal from Dis- trict Court of Bernal- lillo County.
<i>vs.</i>	
GEORGE W. HARRISON, Administrator, <i>et.</i> , Appellants.	

Now, on reading and filing the motion of appellant in the above-entitled cause praying an appeal in said cause from the judgment and decree of this court to the Supreme Court of the United States, it is ordered that an appeal in said cause be, and the same hereby is, granted as prayed for.

THOMAS SMITH,
Chief Justice of the Supreme Court of New Mexico.

And heretofore, to wit, on the 21st day of October, 1895, there was filed in the office of the clerk of the supreme court of the Ter-

ritory of New Mexico an affidavit of value in said cause; which said affidavit is in words and figures following, to wit:

In the Supreme Court of the Territory of New Mexico, July Term,
A. D. 1895.

PEDRO PEREA, Administrator, etc., Appellee,	}	Chancery.
<i>vs.</i>		
GEORGE W. HARRISON, Administrator, etc., Appellant.		
TERRITORY OF NEW MEXICO, {		
County of Santa Fe. }		

William B. Childers, being duly sworn, on his oath says that he has personal knowledge of the property in litigation in the above-entitled cause and of the value thereof, and that the value of said property exceeds the sum and amount of five thousand dollars exclusive of fees and costs in said cause, and that the value of the property claimed by appellee in said cause exceeds the sum and amount of five thousand dollars exclusive of costs and fees in said cause.

WILLIAM B. CHILDERS.

Subscribed and sworn to before me this 21st day of October, A. D. 1895.

[SEAL.]

GEO. L. WYLLYS, *Clerk.*

And afterwards, to wit, on the 21st day of October, 1895, there was filed in the office of the clerk of said supreme court a bond in said cause; which said bond is in the words and figures following, to wit:

In the Supreme Court of the Territory of New Mexico.

PEDRO PEREA, Administrator, Appellee,	}
<i>vs.</i>	
GEORGE W. HARRISON, Administrator, <i>et al.</i> , Appellant.	}

Know all men by these presents that we, George W. Harrison, as principal, and National Surety Company, as his surety, are held and firmly bound unto Pedro Perea, surviving administrator of the estate of Jose L. Perea, Second, deceased, in the penal sum of thirty-three thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this fourth day of October, A. D. eighteen hundred and ninety-five.

The condition of the above obligation is such that whereas the supreme court of the Territory of New Mexico did, on the twenty-sixth day of August, A. D. eighteen hundred and ninety-five, in a certain cause pending in said court wherein the said Pedro Perea, as administrator as aforesaid, was appellee and the said George W. Harrison and others mentioned in said cause were defendants, ren-

der a certain decree in said cause, the said decree being against the said George W. Harrison for the sum of nine twenty-sixths of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents, less the sum of six thousand one hundred and five dollars and seventy-five cents, to wit, nine twenty-sixths of twenty-nine thousand seven hundred and sixty-four dollars and two cents, or the sum of ten thousand three hundred and two dollars and ninety-three cents, and also the sum of six thousand one hundred and five dollars and seventy-five cents, making a total so decreed against said Harrison of sixteen thousand four hundred and eight dollars and sixty-eight cents, together with interest and costs of suit; and

369 Whereas the said George W. Harrison has prayed an appeal of said cause and the decree therein from the said supreme court of the Territory of New Mexico to the Supreme Court of the United States:

Now, therefore, the condition of this obligation is such that if the above-named George W. Harrison shall prosecute said appeal with effect and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

In testimony whereof the said George W. Harrison has hereunto set his hand and seal and the National Surety Company has caused its name to be hereunto subscribed by its president and its corporate seal to be hereunto affixed, duly attested by its secretary, this fourth day of October, A. D. 1895.

[SEAL.]

GEORGE W. HARRISON. [SEAL.]
NATIONAL SURETY COMPANY,
By A. E. STILWELL, *President*.

Attest: W. S. RUGH, *Secretary*.

STATE OF MISSOURI, }
County of Jackson, } ss:

Be it remembered that on this fourth day of October, 1895, before me, the undersigned, a notary public within and for the county of Jackson and State of Missouri, personally came A. E. Stilwell, to me known to be the person who subscribed the name of the National Surety Company as its president to the foregoing bond as surety, and who, being by me duly sworn, upon his oath did say that he is the president of the National Surety Company, and that the said National Surety Company is worth the sum of four hundred fifty thousand dollars (\$450,000) and more, over and above its debts and liabilities, in property not exempt from levy and sale on execution.

A. E. STILWELL.

Subscribed and sworn to before me this the 4th day of October, A. D. 1895.

[SEAL.]

HERBERT W. COOMBS,
Notary Public, Jackson County, Mo.

My commission expires August 26, 1899.

STATE OF MISSOURI, }
County of Jackson. }

Be it remembered that on this fourth day of October, 1895, personally appears before me George W. Harrison, whose name is signed to the above and foregoing bond as principal, and acknowledges that he voluntarily executed said instrument as his free act and deed for the uses and purposes therein mentioned.

370 My commission expires Aug. 26th, 1899.

[SEAL.]

HERBERT W. COOMBS,
Notary Public, Jackson Co., Mo.

STATE OF MISSOURI, }
County of Jackson. }

Be it remembered that on this the fourth day of October, 1895, personally appeared before me, the undersigned, a notary public in and for said county and State, A. E. Stilwell and W. S. Rugh, to me personally known to be respectively president and secretary of the National Surety Company of Kansas City, Missouri, and they and each of them acknowledge the execution of the above and foregoing instrument, as such officers of said company, as the act and deed of said company, and that the seal thereto affixed is the seal of said company and was thereto affixed by said W. H. Rugh, secretary, with full power and authority so to do.

My commission expires Aug. 26th, 1899.

[SEAL.]

HERBERT W. COOMBS,
Notary Public, Jackson Co., Mo.

Approved:

THOMAS SMITH,
Chief Justice.

And afterwards, to wit, on the 22nd day of October, 1895, there *was* filed in the office of the clerk of the supreme court of New Mexico the findings of fact made and certified by said court in said cause; which said findings of fact *was* and *is* in the words and figures following, to wit:

371 In the Supreme Court of the Territory of New Mexico, at the July Term, 1895.

PEDRO PEREA, Administrator, Appellee, }

vs.

GEORGE W. HARRISON, Administrator, *et al.*, Appellants. }

The supreme court of the Territory of New Mexico hereby certifies and finds the following to be the facts in the above-entitled cause:

I.

That Jose L. Perea died about the 21st day of April, A. D. 1883, and left Guadalupe Perea (now Guadalupe Perea de Harrison), his widow, and Jose Leandro Perea, Segundo, son of said Jose and

Guadalupe; and also Jose L. Perea, Benecio F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo, Soledad Perea de Castillo, Josefa Perea de Castillo, Filomena Perea de Otero, Barbara Perea de Yrisarri, Cesaria Perea de Hubbell, Jesus M. Perea, and the complainant, Pedro Perea, the last thirteen of whom were children of Jose L. Perea by a former wife.

II.

That Pedro Perea, Mariano Perea, and Jesus M. Perea were appointed administrators of the estate of their deceased father, Jose L. Perea.

III.

That on the 23rd day of July, 1884, Guadalupe Perea (who afterwards intermarried with the defendant George W. Harrison) was duly appointed guardian of Jose Leandro Perea, Segundo, and as such guardian became possessed of all of the assets and property of the said Jose Leandro which he inherited from his deceased father.

IV.

That the defendant George W. Harrison married the said Guadalupe Perea, widow as aforesaid, on the second day of September, 1885.

V.

That immediately after the intermarriage of the defendant George W. Harrison and the said Guadalupe Perea the said George W. Harrison took charge and control of the affairs of said Guadalupe Perea, including the assets of the said minor Jose L. Perea; that he reduced the assets and property of said minor to money and mingled the same with his own funds and deposited the same in bank
372 to his individual credit, and at the time of final decree in the case in the district court he retained, subject to his individual control, all of the moneys belonging to the estate of Jose Leandro Perea, Segundo.

VI.

That Jose Leandro Perea, Segundo, died on the 25th day of August, 1887, being then a minor about eight years of age, and that at the time of the death of said minor he owed no debts, and there were no charges against his estate except funeral expenses and the expenses of his last illness and certain claims for his maintenance by his said guardian.

VII.

That Guadalupe Perea de Harrison and Pedro Perea were duly appointed joint administrators of the estate of Jose Leandro Perea, Segundo, by the probate court of Bernalillo county on the fifth day of September, 1887, and the said Pedro Perea qualified as such administrator on the first day of October, 1887, and the said Guadalupe Perea de Harrison qualified as such administrator on the ninth day of October, 1887.

VIII.

That after the death of the said Jose Leandro Perea, Segundo, until the filing of the bill of complaint in this cause, Guadalupe Perea de Harrison during her lifetime and George W. Harrison after her death claimed to hold the assets of the estate of the said Jose L. Perea, Segundo, not as administrator, upon the pretense that there could be no distribution of such assets until the final account of Guadalupe Perea de Harrison as guardian was settled by the probate court.

IX.

That George W. Harrison (having charge of all the assets of the said ward) in the name of his said wife, Guadalupe Perea de Harrison, made sundry reports to the said probate court as to the condition of the said estate, some containing false entries to her advantage, and together obstructing distribution among the heirs.

X.

That on the 20th day of October, 1889, Guadalupe Perea de Harrison died, and on the sixth day of January, 1890, George W. Harrison was duly appointed administrator of the said Guadalupe Perea de Harrison, and during all of the period between the
373 death of said Guadalupe Perea de Harrison and his appointment as such administrator he was in possession of the assets of the said Jose Leandro Perea, Segundo, deceased, with full power of their trust character, and wrongfully refused to pay over the same to Pedro Perea, who was the sole surviving administrator of Jose Leandro Perea, Segundo, and entitled to the custody thereof.

XI.

That the value of the services of the solicitors in this cause at the time of the rendition of the final decree herein by this court was the sum of three thousand five hundred and eighty-six dollars and ninety-seven cents.

XII.

That the defendant George W. Harrison had in his possession and was liable to the complainant on the day of the rendition of the final decree herein by this court the sum of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents, which was the total amount of moneys for which he is liable, as herein-before set out, with interest thereon at six per cent. per annum, after allowing all credits to which he or the said Guadalupe Perea de Harrison was entitled.

XIII.

That the value of the services of the special master herein is five hundred dollars.

XIV.

That Pedro Perea, as surviving administrator, is entitled to the statutory commission upon the said sum of thirty-five thousand

eight hundred and sixty-nine dollars and seventy-seven cents, which on the date of said decree amounted to the sum of nineteen hundred and forty-three dollars and forty-eight cents; that Guadalupe Perea de Harrison never claimed to act as administrator of said Jose Leandro Perea, Segundo, and no claim was ever made in this or any other proceeding by her or on her behalf for any compensation or commission as such administratrix.

XV.

That the said Guadalupe Perea de Harrison in her lifetime failed to keep correct accounts of the assets of Jose Leandro Perea, Segundo, which came into her possession, and that the said George W. Harrison also failed to keep correct accounts of his dealings with the said assets.

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XVI.

That George W. Harrison wilfully obstructed the distribution of the assets of the estate of Jose Leandro Perea, Segundo, and by his misconduct rendered it necessary that the complainant should obtain possession of the said assets by the institution of this suit, and that the necessity for this suit arose entirely out of the wrongful conduct of the said George W. Harrison.

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And afterwards, at the regular term of said supreme court of the Territory of New Mexico last aforesaid, on the forty-second day of said term, the same being Wednesday, October 23, 1895, the following, among other, proceedings were had, to wit:

PEDRO PEREA, Administrator, <i>et al.</i>	} 575. Appeal from
<i>vs.</i>	
GEORGE W. HARRISON, Administrator, <i>et al.</i>	Bernalillo County.

On reading and filing the motion of Pedro Perea, administrator, *et al.* in the above-entitled cause praying for the allowance of a cross-appeal herein from the judgment of the supreme court of the Territory of New Mexico to the Supreme Court of the United States, it is ordered that the cross-appeal as prayed for in said motion be, and the same is hereby, allowed.

THOMAS SMITH,

Chief Justice.

And heretofore, to wit, on the 24th day of August, 1895, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico the opinion of the court in said cause; which said opinion is annexed hereto in accordance with rule 8 of the Supreme Court of the United States and is in the words and figures following, to wit:

376 SMITH, C. J.:

This is a bill in equity filed in the district court of Bernalillo county to obtain the distribution of the estate of José Leandro

Perea, 2d, deceased, an infant, who at the time of his death was about eight years of age. The bill was filed by Pedro Perea, as sole surviving administrator, and also as one of the heirs-at-law of the decedent, against George W. Harrison, as an individual, and as administrator of his deceased wife, Guadalupe P. Harrison; all the other heirs-at-law of the decedent being also made parties defendant, and the prayer of the bill being "that a final decree may be entered for a settlement of the said estate, and the distribution thereof, and that the complainant, as surviving administrator, be decreed his reasonable expenses, including solicitors' fees, against said George W. Harrison, individually and as administrator as aforesaid, in and about this suit," and for equitable relief. The facts of the case, as disclosed by the record, are that José Leandro Perea, a wealthy citizen of Bernalillo county, died in 1883, leaving a widow and 13 children, of whom the decedent was one; that each of the said children inherited about \$35,000 at the death of the elder Perea. His widow, Guadalupe Perea, was appointed guardian of the infant child, José Leandro, 2d, and as such received from the administrators of the father the estate of said child. Said Guadalupe Perea, widow as aforesaid, intermarried with the defendant George W. Harrison, and he thereupon took entire charge of her affairs, and notified the administrators of her former husband that when they had any business to transact with her they should communicate with him, as he was the one who attended to all business. This child, José Leandro Perea, 2d, died on the 27th day of August, 1887, and Guadalupe Perea, the then wife of the defendant George W. Harrison, and the complainant, Pedro Perea, were appointed by the probate court of said county administrators of his estate. Mrs. Harrison insisted that, notwithstanding the death of said child, she held his estate as guardian until the final settlement of her accounts as such, and that no part of the same could be turned over to the administrators until such final settlement. The defendant George W. Harrison made for her all reports as guardian, the first report being made in the life of the child, on July 6, 1886. It consisted of three items of debit against the guardian, amounting to \$18,003.09, and stated that the money was in a safe place, and "the interest well pays the expenses of said minor." No credits were claimed in this report, nor was there any charge against the guardian as to many items shown by the record then to have been in her hands. The second report of the guardian was filed on November 7, 1887, more than two months after the death of the child, was denominated by said Harrison, acting in behalf of his said wife, "a final report," and contained debit charges against the guardian amounting to \$25,190.20. No credits were claimed in this report. The third report was filed on the 6th day of March, 1888, and contained debit items amounting to \$26,977.44, and claimed credits amounting to \$9,306.83, showing an alleged balance of \$17,670.61. This last report was excepted to in the probate court, the exceptions were sustained, and the guardian appealed from the judgment to the district court, but did not perfect her appeal until after the filing of this

bill of complaint. This record is silent as to the result of that appeal; but the bill alleges that it was taken at the March, 1888, term of the probate court, and remained imperfect at the time of the filing of this suit, on the 3d day of April, 1890. Mrs. Harrison died on the 20th day of October, 1889, and her husband was appointed her administrator on January 6, 1890. Between the time of her death and his qualification as her administrator, the defendant George W. Harrison on December 17, 1889, wrote a letter to N. C. Collier, Esq., one of the attorneys for complainant, in which he said: "My Dear Sir: In answer to yours of the 16th, my wife never had possession of any of the effects of the estate of José L. Perea, 2d, as administratrix, but as the guardian; and, by Pedro Perea's action, the matter of the settlement of the guardianship is in the district court, and Pedro Perea will have to wait a good while before he gets possession of any of said estate, and will probably learn who he is fooling with before he gets through with me." When this bill of complaint was filed the defendant Harrison demurred to the same, assigning 10 grounds of demurrer, only one of which it is necessary to notice: "Because the said complainant, as the co-administrator of defendant's intestate, seeks by said bill to administer the estate of José L. Perea, 2d, alone, and to the exclusion of defendant, who is entitled to participate in such administration as the administrator of the complainant's co-administrator." This demurrer being overruled, he answered the bill, in double capacity of an individual and as administrator, by a joint and several answer, in which it was insisted that no assets of the estate of José L. Perea, 2d, ever came into the hands of Mrs. Harrison as administratrix,—that she held the same as guardian up to the time of her death,—but alleged that he and the defendant Grover William Harrison, a minor child of himself and his deceased wife, have succeeded to all the interest and rights of said Guadalupe Perea in and to the assets of said estate, and that for said reason the complainant is not entitled to a decree for anything upon said accounting, but defendant alleges that "he is ready and willing to pay any sum for which he or the estate of Guadalupe Perea de Harrison may be found liable on said accounting." The answer also alleged that the complainant was one of the administrators of José L. Perea the elder, and that as such he failed to account for a large sum of money, alleged to be \$30,000, due and owing to the said José L. Perea, 2d, from the estate of his deceased father, and that large sums of money and large amounts of property had come into the hands of complainant, as one of the administrators of said deceased father, of which no account had been made by him, and that the *pro rata* share of said child, José L. Perea, 2d, in the assets so unaccounted for, would amount to \$30,000. He also filed a cross-bill, in which he set up these allegations more in detail, and made all the administrators of the elder Perea parties defendant, and prayed an accounting as to that estate. It appeared from the allegations of this cross-bill that there was a suit then pending in the same court, brought by defendant Harrison against the administrators and heirs-at-law of the elder Perea, for the same relief as that sought by the cross-bill in this

cause. The complainant in this cause excepted to so much of the answer as set up matters relating to the estate of the elder Perea, upon the ground of impertinence, and demurred to the cross-bill for the reason that the matters alleged therein were not germane to this action, and that it sought to make new parties and was multifarious. The exceptions to the answer were sustained. And, while there is no order in the record to that effect, it is conceded by counsel on both sides that the demurrer also was sustained, and the cross-bill dismissed in the court below; that it was so treated by the parties in said court; and it is contended here that this court should so treat it, and pass upon the question as if the record showed the order sustaining the demurrer and dismissing the cross-bill. To this proposition we give our assent; and we shall proceed to determine whether or not there was any error in sustaining the exceptions and demurrer and dismissing the cross-bill.

If the court below was of opinion that the matters set up in the answer were immaterial, and tended only to embarrass the litigation, it properly sustained the exceptions. There was a large amount of money ready for distribution among the heirs of the decedent minor child, and that there might be a further large sum recovered at some future time was not a sufficient reason to delay distribution of that which was ready for distribution. Story, Eq. Pl. § 863. It is not the office of a cross-bill to bring new parties before the court, and, besides, the matters set up in the cross-bill are not germane to the subject-matter of the original bill. The demurrer was, therefore, properly sustained. *Id.* § 389; *Shields v. Barrow*, 17 How. 130.

To the contention advanced that, subsequent to the death of the decedent child, his estate remained in the hands of Guadalupe Perea de Harrison, as guardian, and did not pass to her as administratrix, cannot be conceded. The report of said guardian, made during the life of said child, revealed an estate immediately ready for distribution at the death of said child, and the report made by her subsequent to his death disclosed that the same was still intact, and had increased more than \$7,000. We hold that by operation of law the administratrix, who succeeded herself as guardian, became immediately (in conjunction with her co-administrator) vested with the control and administration of said estate, and that this transfer by law was not arrested by the fact that there may have been no final settlement of her guardianship. It is to be observed, however, that this report was filed as "a final report," and it was an announcement that the estate (no credits being claimed against it by the guardian) was ready for delivery. The case went to a master, who found all the material facts in favor of complainant, and said master stated an account more favorable to the defendant than the facts justified; but we will not disturb his findings, abundantly sustained by the evidence and the rules of law applicable to such cases. *Dillman v. Hastings*, 144 U. S. 136; *Wormley v. Wormley*, 21 U. S. 419; *Davis v. Schwartz*, 155 U. S. 631.

Complaint is made that the decree in this case was against the

defendant personally, and not as administrator. The evidence establishes that for the period of time which elapsed between the death of his wife and defendant's qualification as her administrator, nearly three months, defendant was in possession of the assets of the estate, with full knowledge of its trust character, and without the shadow of right to hold them, claiming them for reasons plainly insufficient in law, and tauntingly asserting his intention to retain them. It is also to be noted that the record does not show that, as administrator of his deceased wife, he ever charged himself with one dollar of these assets, or that they entered into the inventory of her estate, or that they were ever treated by him as a portion of his said wife's estate. It is also shown by his own testimony that he continues in possession of such assets, and that they are deposited in the bank to his credit. Having appropriated them individually, he is estopped to deny his individual liability. We therefore hold that the facts are complete to establish a case for a decree against him as an individual. 1 Perry on Trusts, §§ 129, 217; 2 Perry, Trusts, § 828.

It was earnestly contended by counsel for appellant that the allowance for solicitors' fees without evidence as to the value of the services performed is unwarranted and illegal. We think, however, that the authorities abundantly support the practice followed in this case of charging these fees against the fund, upon the knowledge of the court and the master as to what is just compensation. Some of these authorities are cited in the brief of counsel for appellee. *Ex parte Plitt*, 2 Wall, Jr., 453; *Trustees v. Greenough*, 105 U. S. 532; *Fowler v. Equitable Trust Co.*, 141 U. S. 415. Nevertheless it appears that the solicitors' fee for the complainant, considering the amount involved, is large. We have also determined that we should reduce the master's fee in this case to the sum of \$500. And we direct that the solicitors for complainant be allowed a fee of 10 per cent. upon the total amount found in the hands of the defendant, with interest at 6 per cent., calculated to this date. We find that the commissions of the administrator are in accordance with the statute, and the amount of the same will be calculated as in the decree appealed from.

As to the claim that Mrs. Harrison is entitled to share these commissions, it is sufficient to say that both she in her lifetime, and the defendant Harrison then and after her death, always insisted that she never held the funds as administratrix, and denied participation in their control as co-administrator for said reason, and no claim for such commissions was ever made until after the case came into this court. It is therefore too late to assert the same, even if it were well founded. *Lloyd v. Preston*, 146 U. S. 630; *San Pedro & Canon del Agua Co. v. U. S.*, 146 U. S. 120. We therefore direct that a decree be prepared in accordance with this opinion, and entered as the decree of this court, against the appellant and the sureties on his appeal bond, and that all costs of both courts, including master's and solicitors' fees, be paid out of the fund in appellant's hands, and the remainder, less administrator's commissions, be distributed by said decree.

Laughlin and Hamilton, JJ., concur.

379 TERRITORY OF NEW MEXICO, {
County of Santa Fé. }

Supreme Court.

I, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing is a full, true, and perfect transcript of the record, together with the opinion of the court, in the cause lately pending in said court, wherein Pedro Perea, administrator, was appellee and George W. Harrison, administrator, *et al.* were appellants, as the same remains on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court this the second day of December, 1895.

[Seal Supreme Court, Territory of New Mexico.]

GEO. L. WYLLYS, *Clerk.*

Endorsed on cover: Case No. 16,164. New Mexico Territory supreme court. Term No., 113. George W. Harrison, appellant, vs. Pedro Perea, surviving administrator of the estate of Jose L. Perea, 2d, deceased. Filed January 28, 1896.



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Brief of Appellant for Supreme Court

SUPREME COURT
Filed Nov. 8, 1897.
UNITED STATES.

OCTOBER TERM, A. D. 1897.

GEORGE W. HARRISON,

Appellant,

vs.

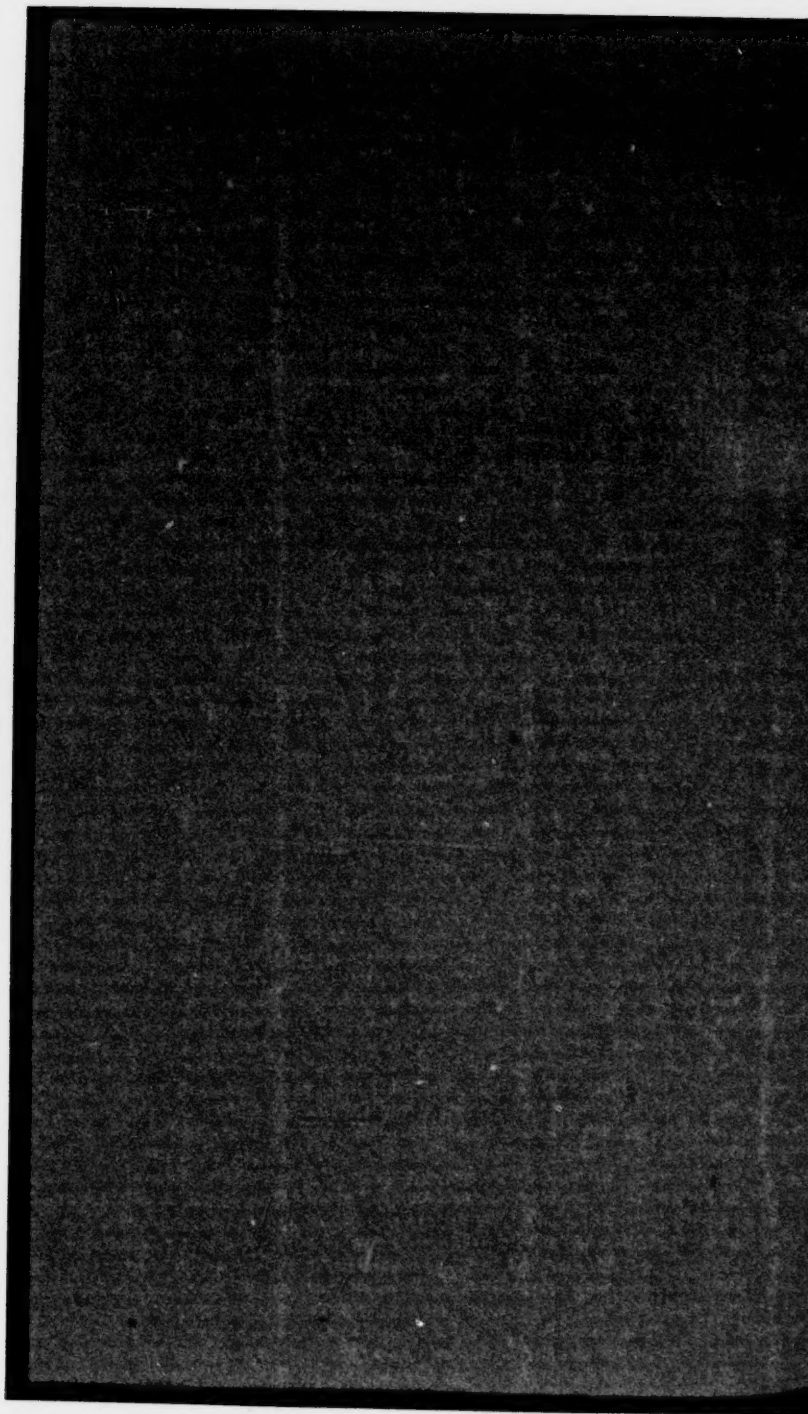
PEDRO PEREA, SURVIVING ADMINISTRATOR OF THE ESTATE OF JOSE L. PEREA, SECOND, DECEASED.

Appellant's Assignments of Error, Brief and Argument.

WM. B. CHILDERS,

For Appellant.

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OCTOBER TERM, 1897.

GEORGE W. HARRISON,
Appellant,
vs.
PEDRO PEREA, SURVIVING ADMINIS-
TRATOR OF THE ESTATE OF JOSE
L. PEREA, SECOND, DECEASED.

(a.) The first exception being to that portion of the answer beginning with "and said defendant," on

line 23, page 2, down to line 13, inclusive on page 3. of the original answer filed in said cause—the portion of the answer to which said exception was sustained and which was stricken out being in words and figures as follows to-wit:

(Page 2.)

“And said defendant alleges that the property and
 24 effects so turned over to the said Guadalupe
 Perea de Harri-
 25 son as such guardian by said administrators and
 received by
 26 her was but a small part of what the said minor
 Jose L. Perea
 27 second, was entitled to have and receive from
 the said admin-
 28 istrators on account of the estate of the said
 Jose Leandro
 29 Perea, Sr., in their hands and there has never
 been any full
 30 and complete settlement by said administrators
 of said estate,

(Page 3.)

1 or any legal settlement thereof whatever, and
 that upon a full
 2 and complete and just settlement of said estate,
 the estate of
 3 the said Jose L. Perea, Second, will be entitled
 to have and
 4 receive from the said administrators of the es-
 tate of Jose
 5 Leandro Perea, Sr., a very large amount of
 property and effects
 6 far exceeding in value any interest which the
 said adminis-
 7 trators, even if they are held to be heirs-at-law
 of the said
 8 minor, can have in the estate of the said minor,
 and that the

9 said complainant, Pedro Perea, is liable and re-
sponsible to the
10 estate of the said minor, Jose L. Perea, Second,
for any and all
11 of the interest of the said minor in the estate of
the said
12 Jose Leandro Perea, Sr., which said complain-
ant and his co-ad-
13 ministrators have failed to account for."

(Transcript in this Court, folios 28 and 35.)

(b.) The second exception to that portion of
said answer beginning with the words "and defend-
ant," on line 23 of page 5, down to and including the
word "debts," on line 29 of said page 5—the part of
said answer to which said exception was sustained
and which was stricken out being as follows, to-wit:
(Page 5.)

"And defendant alleges that it was the duty
24 of the complainant and his co-administrators
to have them-
25 selves collected such debts and divided the
money between
26 the distributees of said estate after the same
was collected,
27 and not to have attempted to assign a portion
of uncollect-
28 ed debts to said minor and that said adminis-
trators are still
29 accountable for said debts."

(Transcript in this Court, folios 48 and 38.)

(c.) The third exception which was sustained to
the words in lines ten and eleven of the original an-
swer, as follows:

(Page 8.)

"And his co-administrators of the estate of Jose
Leandro Perea, Sr., deceased," and which said words
were stricken out. (Transcript in this Court, folios

48 and 40.)

(d.) The fourth exception to that portion of said answer beginning with the words "and said," in line 17 on page 9, down to and including line 2 on page 10, as follows:

(Page 9.)

17 "And said defendant further alleges that said
18 complainant is accountable for the assets of the
estate of
19 Jose Leandro Perea, Sr., for which he has never
accounted, and
20 of which administration there has never been
any valid final
21 settlement, and in which said assets so unac-
counted for the
22 said Guadalupe Perea de Harrison, as widow of
the said Jose
23 Leandro Perea, deceased, and since her death,
her child, the de-
24 fendant Grover William Harrison, and this de-
fendant as her sur-
25 viving husband had and have interest far ex-
ceeding in amount
26 any interest said complainant can have in the
estate of said
27 Jose L. Perea, Second. And said defendant
further answering
28 alleges that although the said Guadalupe Perea
de Harrison in
29 her lifetime demanded that said complainant
fully account
30 for said assets, yet he failed and refused to do
so, and she was
31 compelled to bring suit, in this honorable Court
against him,

(Page 10.)

1 for the same, which said suit is still pending
therein, and will
2 be hereafter more fully referred to."

and which said words were stricken out. (Tanscript in this Court, folios 48, 41 and 42.)

(e.) The fifth exception to that portion of said answer, beginning with the words "and said," on line 7 on page 11, down to and including the word "court" in line 26 on page 12 of the original answer, the part to which said exception was sustained and which was stricken out being as follows:

(Page 11.)

"And said defendant further alleges that upon a full and fair accounting by the said complainant as to his liability to the estate of the said Jose L. Perea, Second, for an account of assets in his hands as one of the administrators of the estate of Jose Leandro Perea, Sr., deceased, for which neither he nor his said co-administrators have ever accounted, the said complainant would be found indebted to the estate of the said Jose L. Perea, Second, in a very large sum of money, and in a very much larger sum than any interest he has or can have as heir-at-law of the said Jose L. Perea, Second, in the estate of the said Jose L. Perea, Second, and defendant further alleges that the estate of the said Jose L. Perea, Second, is not indebted in any sum whatever, and that the estate of the said Jose Leandro Perea, Sr., is likewise not indebted in any sum whatever, and that the time for filing

22 claims against both estates has long since
passed, and all
23 such claims are barred and all that is necessary
to fully
24 settle both of said estates is to ascertain upon an
accounting
25 what is due to each of the distributees and heirs-
at-law of
26 the said Jose Leandro Perea, Sr., and Jose L.
Perea, Second, if any
27 thing, and that a decree be rendered in favor of
such distribut-
28 ees and heirs-at-law; and defendant further al-
leges that the
29 complainant and the defendant to this bill are
all of such
30 heirs and distributees except Jesus M. Perea,
one of the defen-
31 dants named herein, who has died since the fil-
ing of this bill

(Page 12.)

1 and upon whose estate as defendant is informed
and believes,
2 there has as yet been no administration. And
defendant fur-
3 ther alleges that said complainant is not entitled
to any decree
4 against this defendant individually or as admin-
istrator of the
5 estate of Guadalupe Perea de Harrison, because
as hereinbefore
6 alleged, he was indebted to the said Jose L.
Perea, Second,
7 at the time of his death, for a large amount of
the assets of
8 the estate of Jose Leandro Perea, Sr., deceased,
the father of
9 said Jose L. Perea, Second, and because as this
defendant alleges,
10 the said complainant was likewise indebted to

the said Guadalupe Perea de Harrison, at the time of her death for the assets of said estate of Jose Leandro Perea, Sr., the said Guadalupe Perea de Harrison, having been the surviving widow of the said Jose Leandro Perea, Sr., for which said assets neither the said complainant nor his co-administrators Jesus M. Perea and Mariano Perea have ever fully accounted either to the said Jose L. Perea, Second, or the said Guadalupe Perea de Harrison as his guardian or to the said Guadalupe Perea de Harrison individually, and on account of which said failure to account the said Guadalupe Perea de Harrison and this defendant as her husband brought suit in this honorable court on the 24th day of February, A. D., 1888, against the complainant and his co-administrators, which said suit is entitled Guadalupe Perea de Harrison, et al., against Jesus M. Perea, et al., and is still pending, being numbered 2610 upon the docket of this court."

Second. The Court erred in affirming the action of the District Court sustaining complainant's demurrer to the defendant's cross-bill. Transcript in this Court, folios 49 to 88 inclusive. See opinion 233.

Third. The Court erred in not holding that the matters and things set up in defendant's cross-bill

were not germain to the matters sought to be litigated by the original bill and in not holding that complainant's demurrer thereto should have been overruled by the District Court. See opinion page 233.

Fourth. The Court erred in affirming the District Court in sustaining the Master's sixth and seventh findings of fact that the defendant or intestate should have invested or have left invested in sheep or bank stock the funds of the ward, when no order or other authority for so doing was shown. Folios 341-358.

Fifth. The Court should have held that the defendant's exception to the master's first finding of law was well taken. Said master's first finding of fact was as follows: "The powers of Guadalupe Perea de Harrison, as guardian of Jose L. Perea, Segundo, ceased immediately upon the death of said ward." Folios 120-341.

Sixth. The Court erred in not reversing the decrees of the District Court for overruling the appellant's exception to the master's second finding of law, which finding is as follows: "After her appointment as administratrix of the estate of Jose L. Perea, Segundo, Guadalupe Perea de Harrison held said estate as such administratrix and not as guardian of said deceased minor." Transcript, folios 120—Second exception to master's finding of law, folio 341; 14th assignment of error in court below, folio 358.

Seventh. The Court erred in not reversing the District Court for overruling the defendant's exception to the master's second finding of law, which is

as follows: "Section 1018 of the Compiled Laws of New Mexico, 1884, makes it the duty of a guardian to loan funds of the ward beyond what may be necessary for the support and maintenance of the ward, under the direction of the Probate Court; and section 1019 makes such guardian liable for interest if he fails to loan money of his ward as aforesaid." Transcript, folio 120. Third exception, folio 342; 15th assignment of error in the the Court below, folio 359.

Eighth. The Court erred in not reversing the District Court for overruling the defendant's exception to the master's fourth finding of law, which is as follows: "After the death of Guadalupe Perea de Harrison, Pedro Perea, the surviving administrator, was the only person entitled to the possession of the estate of said Jose L. Perea, Segundo, and G. W. Harrison, by retaining possession of said estate and refusing to deliver the same over to said administrator, became liable for the proper management and control thereof." Transcript, folio 121; fourth exception, folio 342; 16th assignment of error in the Court below, folio 359.

Ninth. The Court erred in not sustaining defendant's seventeenth assignment of error in the Court below to the effect that the master by his fifth finding of law erroneously charged up interest by striking balances more frequently than the law warrants, and that he charged too much interest for that reason upon the estate, and that the amount for that reason, which the master held complainant is entitled to receive, is in excess of the amount shown

by the evidence. Folios 121, 342 and 359.

Tenth. The Court erred in not sustaining defendant's 19th assignment of error to the effect that the District Court erred in overruling appellant's exception to said master's seventh finding of law, to the effect that said complainant was entitled as administrator of the estate of said Jose L. Perea, 2nd, to the statutory commission for receiving and paying out the whole balance decreed against the defendant, when as a matter of law, he is only entitled to receive commission upon funds and property actually received and disposed of by him. Master's VII finding of law, folio 122. Seventh exception, folio 342; 19th assignment of error in the court below, folio 360.

Eleventh. The Court erred in sustaining the Court below in overruling defendant's exception to the master's VIII finding of law, allowing the complainant statutory commission on the whole of said estate, none of which he had received and disbursed, while at the same time charging the defendant interest on the whole of the estate which he found to be in his hands. Folio 122; eighth exception, folio 343; 20th assignment of error, folio 360.

Twelfth. The Court erred in holding that the complainant was entitled to receive the statutory commission upon any part of said estate, none of which he had received or disbursed. Master's VIII finding of law; master's recommendation I, folio 123; eighth and ninth exceptions, folio 343; 21st assignment of error, folio 360.

Thirteenth. The Court erred in following the master's recommendation and decreeing that the de-

fendant pay over to the complainant as administrator of said deceased minor, nine twenty-sixths (9-26) of the balance of said estate found to be in his hands, when it clearly appeared that there had not been a full accounting between the defendant and said complainant, or between defendant's intestate as guardian of said minor, and said complainant as to said minor's estate and his interest in his deceased father's estate. I and II recommendations of the master, folio 123; 9th and 10th exceptions, folio 343; 21st and 22nd assignments of error, folios 360 and 361.

Fourteenth. The Court erred in finding by its VIII finding of fact that said assets were not held by the defendant's intestate Guadalupe Perea de Harrison as the administratrix of said deceased minor, when as a matter of law she held them after said guardian's death and letters of administration had been granted her not as guardian but as administratrix. Folio 372, page 229.

Fifteen. The Court erred in holding by its tenth finding that the refusal of the defendant to pay over the assets belonging to said deceased minor's estate which had been in his intestate's hands either as guardian or co-administrator of complainant to him without an accounting or other settlement of said estate, was wrongful as a matter of law.

Sixteenth. The Court erred in finding that the defendant was liable to the complainant for the value of solicitor's fees, at the time of the rendition of the decree therein, in the sum of three thousand five hundred and eighty-six dollars. Court's XI finding, folio 373.

Seventeenth. The Court erred in finding that the defendant George W. Harrison had in his possession and was liable to the complainant on the day of the rendition of the decree therein in the sum of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents, with interest thereon at six per cent. XII finding, folio 373.

Eighteenth. The Court erred in finding that the complainant was entitled to his full statutory commission on the whole of said last mentioned sum. XIV finding, folio 373.

Nineteenth. The Court erred in rendering a decree in this cause against the defendant in his individual capacity, when upon the facts, if he is liable at all, he is liable as administrator of the estate of Guadalupe P. Harrison, deceased. Folios 363 to 366.

Twentieth. The Court erred in making its V finding that the defendant immediately after his intermarriage with the said Guadalupe Perea de Harrison, took charge and control and mingled the same with his own funds, or did anything else with them other than as the agent of his wife; because there is no evidence whatever, upon which to predicate the finding as made by the Court. Folio 372.

Twenty-first. The Court erred in making its X finding that the said defendant after the death of his wife was in possession of the assets of the deceased minor in any other capacity than that of administrator of his wife's estate—the Court having already found that long before her death said funds had been commingled with her general estate. Folio 373.

Twenty-second. The Court erred in finding and

decreeing that defendant was liable as a trustee for funds in his hands, when neither the evidence nor the Court's findings identify or show any particular assets in his hands to have been assets of said minor's estate, and the bill itself was not brought for the purpose of impressing a trust on any particular property or assets or against the defendant as a constructive trustee and contains no allegations upon which such relief can be predicated. The only relief the bill warrants is an accounting against the estate of Guadalupe Perea de Harrison.

Twenty-third. The Court erred in making its XVI finding, which is not a finding of fact at all, but is founded upon a mistake of law, because defendant had a right to retain said assets as administrator of his deceased wife's estate until there had been some settlement in the Probate or other Court by accounting or other determination of the claim against his intestate's estate. Finding XVI, folio 374.

Twenty-fourth. The Court erred in decreeing in favor of the complainant a solicitor's fee of ten per cent. on the whole amount of the said estate as found by the Court.

Twenty-fifth. The Court erred in decreeing in favor of the complainant the full statutory commission allowed to administrators for the settlement of estates, upon the whole amount of said estate as found by it. Folios 364-5.

Twenty-sixth. The Court erred in rendering any final decree whatever in said cause, when it clearly appeared that there had not been any complete accounting and settlement of said estate, but should

have reversed and remanded the cause to the District Court in order that there might be such full and final settlement and accounting.

Wherefore, appellant prays that the decree of the Court below be set aside, reversed and held for naught.

WM. B. CHILDERS,
Solicitor for Appellant.

I acknowledge service of copy of above assignment of errors this 19th day of October, 1897.

NEILL B. FIELD,
Counsel for Appellee.

STATEMENT OF THE CASE.

The bill in this cause is for an accounting and settlement of the estate of Jose L. Perea, second, a minor, who dies on the 27th day of August, 1887, being about eight years old. The bill alleges that he dies leaving Guadalupe Perea de Harrison, his mother then in life; the complainant Pedro Perea and the defendants Jose L. Perea, Jesus M. Perea, Benicio F. Perea, Marina Perea, Jacobo Perea, Beatriz Perea de Armijo, Soledad Perea de Castillo, Josefa Perea de Castillo, Filomena Perea de Otero, Barbara Perea de Yrisarri and Cesaria Perea de Hubbell, and Grover William Harrison, his heirs at law; that is to say, his mother and thirteen brothers and sisters. It appears from the Master's report and from the first finding of fact by the Supreme Court of New Mexico, that Jose L. Perea, Sr., died about the 21st day of April, A. D., 1883 and left surviving him Guadalupe Perea

his widow, who afterwards intermarried with the defendant George W. Harrison, the deceased minor, Jose L. Perea, segundo, and his twelve half brothers and sisters; the said Jose segundo being the son of Jose L. Perea, Sr., and the said Guadalupe; and the said Grover William Harrison being the son of the said Guadalupe and the defendant George W. Harrison.

The bill of complaint also alleges that the said Jose L. Perea, second, died leaving his mother Guadalupe Perea de Harrison, the said Grover William Harrison and his twelve other half brothers and sisters, his heirs at law. Record folios 4 and 371; findings 1, 2 and 3 of the Master, Record folio 116.

The bill alleges and it is admitted that Guadalupe Perea de Harrison became the guardian of the property of the minor, Jose L. Perea, on the 23d day of July, 1884, and received property and effects on account of her said ward from the complainant, Pedro Perea, as administrator of the estate of his deceased father, Jose L. Perea, Sr., and his co-administrators Jesus M. Perea and Mariana Perea. But it was alleged by defendants that the amounts so received were only a part of what the said minor was entitled to receive. Complainant's bill, Record folio 4; defendant's answer, record folios 34 and 35.

The Court by its III finding of fact finds that the said guardian "became possessed of all the assets and property of the said Jose Leandro Perea which he inherited from his deceased father," but this finding is not supported by any evidence whatever. The Court by sustaining the exceptions to defendant's answer

and the demurrer to the cross bill, deprived the defendant of any opportunity to show that the said minor was entitled to any assets which had not been received by his guardian.

After the death of the said minor on September 5, 1887, both the complainant and Guadalupe Perea de Harrison applied to the Probate Court for letters of administration upon the estate of Jose L. Perea, 2nd, and the Court granted letters to both applicants jointly. Both qualified. Record folio 6.

On November 7th, 1887, the said Guadalupe filed a final report for the purpose of having her guardianship settled and getting a final discharge. (Record, folios 7, 17, 18, 19, 20, 21 22, 23, 24.) The report not having been acted upon the said guardian filed an amended and more detailed report, which differs very little from the other report in amount of property shown or otherwise, except that it shows receipts and disbursements in more detail, and also the specific kinds of property received (Record folios 8, 9, 19, 24.) Upon the filing of this report in the Probate Court, the complainant appeared and objected to its approval and to the discharge of the guardian, because, as he alleged, the said report was incorrect and insufficient and specified ten items amounting as claimed to \$3,443.00 and charged generally that she had not sufficiently charged herself with various items, including interest upon sheep and money, and that the guardian improperly credited herself with large amounts. (Record, folios 9-24 and 25.)

The bill alleges that said objections were sustained by the Probate Court and that the said guardian

took an appeal, giving bond therefor, which was duly approved by the Probate Judge, and that the Records in the Probate Court so show. That said appeal was taken and granted at the March term, 1888, of said Probate Court, and was returnable to the May term of the District Court for Bernalillo County.

The bill also alleges that said appeal was not docketed and was not prosecuted up to the 20th of October, 1889, at which time said Guadalupe Perea de Harrison died, and that at said time, said appeal had not been docketed or prosecuted. The bill was filed on the 3d day of April, 1890. (Record, folios 9-10.)

The answer admits the filing of said reports and alleges that the reports show that a part of the effects secured by the guardian were outstanding debts and promissory notes, which complainant and his co-administrators of the estate of Jose L. Perea, Sr., had pretended to turn over to said guardian on account of said minor, and that said debts were parts of debts due to the said Jose L. Perea, Sr., deceased, divided between the distributees of said estate, and for which said guardian received no evidence given by the debtor whatever, and the collection of which she could not enforce, or they were uncollectible; and that it was the duty of the complainant and his co-administrators to have collected such debts and distributed to the distributees the money collected.

The answer also admits that objections were filed to the report of the guardian by the complainant,

and that the second report was filed on account of said exceptions, and that upon the hearing the Probate Court arbitrarily refused to hear any evidence and denied that the appeal had been abandoned, and alleged that it had been docketed and was then pending in the District Court. (Record, folios 39 and 40.)

Upon the state of facts above alleged the complainant filed the bill in this cause.

So much of the minor's interest in his deceased father's estate as had been distributed to him by the complainant and his co-administrators of Jose L. Perea, Sr., had been received by Guadalupe Perea de Harrison as guardian of her minor child. Upon his death, his half brother, the complainant, and his mother both applied to the Court for letters of administration on the estate of the deceased. The Court granted letters to both applicants. Thereupon the guardian asked for a settlement of her guardianship, in order that the estate might pass into the hands of the administrators of the estate and insisted that she was entitled to have her accounts settled—instead of settling them and rendering a decree of some kind, the Court refused to consider her report, from which decision she appealed.

The appeal was not docketed or perfected until after the death of Guadalupe Perea de Harrison, the guardian. It was then filed on the 3d of April, 1890.

The bill was filed by the complainant against the thirteen half brothers and sisters of the deceased minor, and against Geo. W. Harrison, individually

and as administrator of his deceased wife, Guadalupe Perea de Harrison, and prayed for an accounting to the complainant, Pedro Perea, as surviving administrator of Guadalupe Perea de Harrison, deceased, for the property and assets of the estate of said minor *that remained in the hands of the deceased, Guadalupe Perea de Harrison, at the time of her death,* and prayed for a decree against the said defendant, G. W. Harrison, *upon such accounting both individually and as administrator of the said Guadalupe,* and that *as administrator he account for the value of all the estate of the said minor that came into her hands while guardian as aforesaid, and not remaining in her hands as guardian at the time of her death,* and that said Harrison, individually, and as administrator as aforesaid, account for all assets, rents, interest, &c., that have been collected or should have been collected by him as assets of said estate of said minor, since the death of the minor, and that said appeal from the Probate Court be decreed null and void, &c., and that said Harrison, *individually, and as administrator,* account to complainant, as surviving administrator as aforesaid, for the damage, waste and injury accruing and having been caused to the said minor's estate for the wrongful withholding of the same by said Harrison and his intestate. The bill further prayed for a final decree settling and distributing said estate, and that complainant be decreed his solicitor's fees against said Harrison, individually and as administrator in and about this suit, and for general relief. (Record folios, 14-16).

To this bill the defendant, individually, and as administrator of the said Guadalupe, answered in addition to the allegations already above set forth, de-

nying that the property received by the guardian was all the estate of the minor—that the property so received was received from the complainant, Pedro Perea, Mariana Perea, and Jesus Perea, then deceased, as administrators of the estate of Jose L. Perea, Sr., deceased—"and that the property and effects so turned over to the said Guadalupe Perea de Harrison, as such guardian, by said administrators and received by her was but a small part of what the said minor, Jose L. Perea, second, was entitled to have and receive from the said administrators on account of the estate of the said Jose Leandro Perea, Sr., in their hands, and that there has never been any full and complete settlement by said administrators of said estate, or any legal settlement thereof whatever, and that upon a full and complete and just settlement of said estate, the estate of the said Jose L. Perea, second, will be entitled to have and receive from the said administrators of the estate of Jose Leandro Perea, Sr., a very large amount of property and effects, far exceeding in value any interest which the said administrators, even if they are held to be heirs at law of the said minor, can have in the estate of the said minor, and that the said complainant, Pedro Perea, is liable and responsible to the estate of the said minor, Jose L. Perea, Second, for any and all of the interest of the said minor in the estate of the said Jose Leandro Perea, Sr., which said complainant and his co-administrators have failed to account for."

The answer also alleged that a large part of the effects shown by his guardian's reports to have been

received by her, consisted of outstanding debts and promissory notes which said complainant and his co-administrators of the estate of Jose L. Perea, Sr., had pretended to turn over to said guardian on account of said minor, and that said debts were either uncollectible or were parts of debts due to the late Jose L. Perea, Sr., divided between the different distributees of said estate for which the guardian received no evidence whatever, given by the debtors, and the collection of which she could not enforce, and then the answer alleged: "And defendant alleges that it was the duty of complainant and his co-administrators to have themselves collected such debts and divided the money between its distributees of said estate after the same was collected, and not to have attempted to assign a portion of uncollectible debt to said minor, and that said administrators are still accountable for said debts."

The answer also alleged that defendant was not entitled to the possession of the estate in the hands of the guardian until the guardianship accounts were fully settled, and proceeded to allege that the complainant was accountable for the assets of the estate of Jose L. Perea, Sr. for which he had never accounted and of which administration there had never been any valid settlement, and in which assets so unaccounted for the said Guadalupe, deceased, as the widow of the said Jose L. Perea, deceased, and since her death her child, the defendant, Grover William Harrison, and the defendant, her surviving husband, had an interest far exceeding in amount any interest said complainant could have in the es-

tate of Jose L. Perea, Second, and then alleged: "And said defendant further answering alleges that although the said Guadalupe Perea de Harrison in her life time demanded that said complainant fully account for said assets, yet he failed and refused to do so, and she was compelled to bring suit in this Honorable Court against him for the same, which said suit is still pending therein, and will be hereafter more fully referred to."

The answer also alleged: "And said defendant further alleges that upon a full and fair accounting by the said complainant as to his liability to the estate of the said Jose L. Perea, Second, for an account of assets in his hands as one of the administrators of the estate of Jose Leandro Perea, Sr., deceased, for which neither he nor his co-administrators have ever accounted, the said complainant would be found indebted to the estate of the said Jose L. Perea, Second, in a very large sum of money, and in a very much larger sum than any interest he has or can have as heir at law of the said Jose L. Perea, Second, in the estate of Jose L. Perea, Second, and defendant further alleges that the estate of the said Jose L. Perea, Second, is not indebted in any sum whatever, and that the estate of the said Jose Leandro Perea, Sr., is likewise not indebted in any sum whatever, and that the time for filing claims against both estates has long since passed, and all such claims are barred and all that is necessary to fully settle both of said estates is to ascertain upon an accounting what is due to each of the distributees and heirs-at-law of the said Jose Leandro Perea, Sr., and Jose L.

Perea, Second, if anything, and that a decree be rendered in favor of such distributees and heirs-at-law; and defendant further alleges that the complainant and the defendants to this bill are all of such heirs and distributees, except Jesus M. Perea, one of the defendants named herein, who has died since the filing of this bill, and upon whose estate, as defendant is informed and believes, there has as yet been no administration. And defendant further alleges that said complainant is not entitled to any decree against this defendant individually or as administrator of the estate of Guadalupe Perea de Harrison, because as hereinbefore alleged, he was indebted to the said Jose L. Perea, Second, at the time of his death, for a large amount of the assets of the estate of Jose Leandro Perea, Sr., deceased, the father of said Jose L. Perea, Second, and because as this defendant alleges, the said complainant was likewise indebted to the said Guadalupe Perea de Harrison, at the time of her death, for the assets of said estate of Jose Leandro Perea, Sr., for which said assets neither the said complainant nor his co-administrators, Jesus M. Perea and Mariana Perea have ever fully accounted to either of the said Jose L. Perea, Second, or the said Guadalupe Perea de Harrison, as his guardian or to the said Guadalupe Perea de Harrison individually, and on account of which said failure to account the said Guadalupe Perea de Harrison and this defendant as her husband brought suit in this Honorable Court on the 24th day of February, A. D., 1888, against the said complainant and his co-administrators, which said

suit is entitled Guadalupe Perea de Harrison, et al., against Jesus M. Perea, et al., and is still pending, being number 2610 upon the docket of this Court."

To the four allegations last above quoted from the answer the complainant filed exceptions for impertinence, which the District Court sustained, and this ruling was affirmed by the Supreme Court of the territory, and is assigned here as error. See first assignment of error.

These allegations are in substance that the complainant, the defendant Mariano Perea, and Jesus M. Perea, deceased, were administrators of the estate of Jose L. Perea, Sr., and as such delivered to Guadalupe Perea de Harrison the property and effects, which she held as guardian of Jose L. Perea, Second, which was but a small part of what said minor's interest in his father's estate amounted to, and that for the balance the said administrators of his father's estate were accountable, and should be held to account in this suit. That after the death of the said minor said balance was coming to the said Guadalupe and the other heirs-at-law of the said minor; that said Guadalupe had coming to her as the widow of Jose L. Perea, Sr., a large amount of property for which said administrators had not accounted; that ever since the death of the said Guadalupe, the interest coming to her through the said minor Jose L. Perea, Second, and to herself, as widow of her deceased husband had passed to the defendant, G. W. Harrison as her surviving husband, and their child, the defendant, Grover William Harrison; and that said estate of Jose L. Perea,

Sr., had never been finally settled, and that both of said estates could be settled in this suit, etc.; and also that the complainant and his co-administrators have never fully accounted to the said Jose L. Perea, Second, or the said Guadalupe as his guardian, or to the said Guadalupe individually for the assets of the estate of Jose L. Perea, Sr., and on account of their failure to account, the said Guadalupe and her husband, the defendant Harrison, brought suit in the District Court for Bernalillo County on the 24th day of February, 1888, against the said complainant and his co-administrators, giving the title and the docket number of said suit. To all these allegations the Court sustained the exceptions for impertinence. (Record, folios 38-40-41-43-45-87.)

The Court, by sustaining these exceptions, held that although this was a bill praying for a full and final settlement of the estate of Jose L. Perea, Second yet no accounting could be had of assets in the hands of complainant and his co-administrators of Jose L. Perea, Sr., in which said deceased minor was interested as heir and distributee, and for which this complainant was responsible.

Defendant also by leave of the Court filed a cross-bill setting up more fully and in detail the claims of the said minor and Guadalupe Perea de Harrison deceased, against the complainant and his co-administrators on account of the estate of Jose L. Perea, deceased. Said cross-bill after making proper allegations to parties and the succession of the defendant Harrison to the rights of Guadalupe, his deceased wife, and through her to an interest in the

estate of Jose L. Perea, Second, and bringing of a suit against said administrators, being the suit referred to in the answer. (Record, folio 45,) repeats the allegations contained in the original bill filed in said suit, and makes such allegations a part of the cross-bill. (Record, folio 52.) The cross-bill then prayed that said bill be taken and considered a part of the cross-bill and that defendant might have the relief therein prayed for. The bill originally exhibited against the complainant, his co-administrators and the other distributees as well as the cross-bill, prayed for an accounting as to the interest of both Jose L. Perea, Second, and Guadalupe Perea de Harrison in the estate of Jose L. Perea, Sr., and that the cross complainant received his interest therein coming to him through them. (Record, folios 78 to 83.)

To this cross-bill defendant demurred on the following grounds: that the matters alleged and as to which relief was prayed were in no wise connected with the subject matter of the original bill—that it was in effect consolidating two separate district suits in no wise connected with each other—and in which the parties were not the same, that the relief prayed for was against Pedro Perea and Mariano Perea as administrators of Jose L. Perea, deceased, and as such administrators they were not parties to the original bill, that the cross-bill was multifarious and without equity. (Record, folios 84 and 85.) A hearing and argument was had at the same time the exceptions to defendants answer were argued, and both were taken under advisement.

Both parties as appellant believes—certainly the

appellant—understood that the demurrer was sustained at the same time the exceptions were. It appears however, that no order was ever entered sustaining the demurrer, but it has ever since been treated as sustained by the Court. (Record, folio 87.) On the next day after the exceptions were sustained, as shown by the record, the complainant filed his replication to defendants' answer. (Record, folio 88.) A guardian ad litem was appointed for the infant defendant who answered for him. (Record, folios 90-91.) The case from then on is treated as having been referred to Karl A. Snyder, as special master, but no order is on record showing that it was referred to special master. Said special master proceeds to hear evidence and to make his report.

Both parties appeared before said Snyder, as master, and introduced their proofs on the issues as made up, or supposed to be made up.

Said Snyder, as master, made his report, to which both sides filed exceptions. (For defendant's exceptions see Record, folio 340.) The master's findings of fact and law were open to many objections, as defendant thinks. His reception of evidence and findings were, of course, in line with the Court's ruling on the exceptions to defendant's answer, and the demurrer to defendant's cross-bill. It was useless for defendant to offer evidence of the allegations stricken out of defendant's answer on the exceptions of complainant, or of the allegations in the cross-bill.

POINTS AND AUTHORITIES.

I.

The Court should not have sustained the exceptions to defendant's answer. The allegations excepted to were not impertinent, and if true, there could be no full and final settlement and distribution of the estate of the deceased minor, without taking into account all his property. These allegations alleged that the complainant had property in his hands, and as one of the administrators of his father's estate, was responsible to said minor for assets of said estate which had not been accounted for by said administrators.

A favorite ground of equity jurisdiction is the prevention of a multiplicity of suits. If one of the distributees of the estate of Jose L. Perea—for example, the defendant, Grover William Harrison—had filed an original bill against the complainant and the defendant, G. W. Harrison, as administrator of Guadalupe Harrison, deceased, alleging that she and complainant were co-administrators of the estate of Jose L. Perea, 2nd., &c., as in the original bill filed by complainant, and in addition thereto that the deceased, Jose L. Perea, 2nd., had not received by his guardian, or otherwise, all his interest in his father's estate, and that for the balance the complainant and his co-administrators of that estate were accounta-

ble. Such a bill would **not be** held multifarious or open to demurrer. There can not be a final settlement of an estate unless all the assets are accounted for. If this is true it is clear that the Court erred in sustaining the exceptions to so much of complainant's exceptions as alleged, that complainant was responsible for assets of the estate of Jose L. Perea, 2nd., which had never been accounted for by the administrators of Jose L. Perea, Sr., and that there had been no final settlement of that estate.

If such an original bill would not have been multifarious, then these allegations were proper in an answer to the original bill for an accounting, and also in a cross-bill praying for relief.

Would such a bill be multifarious, and what are the principles applicable to that and the allegations in defendant's answer and also in the cross-bill?

Chancellor Walworth in *Newland vs. Rogers*, 3 Barbour's, Ch. 434, on this subject, said:

"The appellant's counsel is wrong, however, in supposing that two distinct and independent matters or claims, by the same complainant against the same defendant, cannot properly be united in one bill. Multifariouness, properly speaking, is where different matters having no connection with each other, are joined in a bill against several defendants, a part of whom have no interest in, or connection with some of the distinct matters for which the suit is brought; so that such defendants are put to the unnecessary trouble and expense of answering and litigating matters stated in the bill, in which they are not interested, and with which they have no connection. But a simple misjoinder of different causes of complaint, between the same parties which causes cannot conveniently and properly be litigated

together, is sometimes called multifariousness; though the ground of objection in such cases depends upon an entirely different principle; and is a mere question of convenience in the administration of justice. In cases of strict multifariousness the objection to the form of the bill is based upon the evident impropriety of compelling a part of the defendants to answer and litigate matters in which they are not interested, and which are not so connected with matters in which they are interested, as to render it proper, for the convenient administration of justice, to litigate and dispose of the whole in one suit. But the Court of Chancery abhors a useless multiplication of suits between the same parties, and endeavors to prevent it as far as practicable. For this reason the Court will not allow separate bills to be filed for different parts of the same account between the same parties; although the account relates to transactions which are not essentially connected with each other. (*Purefoy vs. Purefoy*, 1 Vern. Rep., 29.) Therefore, to sustain the objection that several distinct matters and causes of complaint between the same parties are improperly joined in the same bill, such matters must be of such different natures or the forms of proceeding in relation to such several matters must be so different, that it would be improper, or very inconvenient, to litigate the same in one suit. For there is no such general principle in the court of chancery that distinct matters between the same parties, and who sue or are sued in the same right or capacity, cannot properly be united in the same bill. On the contrary, there are several cases in which it has been held that matters of the same nature and between the same parties, although arising out of distinct transactions, may be joined in the same suit. These cases are mostly referred to in the well considered opinion of Lord Cottenham in *Campbell vs. Mackay*, (1 Mylne & Craig's Rep., 616.) And his lordship notices, particularly, the decisions of the vice chan-

cellor and of Lord Brougham, in the case of the Attorney General vs. The Merchant Taylor's Company (1 Mylne & Keen's Rep., 189.) In that case an information was filed to establish eight charitable trusts created by different persons between the years 1518 and 1682. And although the objects of the several trusts were not the same and the trust monies in some of them were to be loaned without interest, and in others upon interest, but at different rates, yet as the general objects of the various trusts, except one, were in favor of the members of the company or its poor members, the court held that seven of the charitable trusts were properly joined in the same information. But in relation to the eighth trust, as another corporation was interested in the trust and was a necessary party to the suit to establish that trust but had no connection whatever with the other seven trusts, the court permitted the information to be amended by striking out what related to that trust; leaving it to stand as a valid information as to the other seven."

In Daniels Ch. Pr. & Pl., it is said:

"In *Purefoy vs. Purefoy*, where an heir by his bill prayed an account against a trustee of two several estates that were conveyed to him for several and distinct debts, and afterwards would have had an account as to the other only, the Court decided that an entire account should be taken of both estates for that it is allowed as a good cause of demurrer in this Court that a bill is brought for a part of a matter only, which is proper for one entire account, because the plaintiff shall not split causes and make a multiplicity of suits."

1 Daniels Chancery Practice, 336 (Perkins Ed. 338), citing 1 Vernon, 29. * * *

"But although you can not in general join the administration of the estates of two different persons in the same suit, where the parties interested in such estates are different, yet where the same parties

claim the benefit of both estates, and they are so connected that the account of one cannot be taken without the other, the joinder of them in the same suit will not be multifarious."

1 Daniels, 366, citing Campbell vs. McKay, 1 M. and C., 603, Lewis vs. Edmunds, 6; Sim., 251, Carter vs. Balfour, 19 Ala., 814; Rump vs. Greenhill, 20 Beav., 512; Young vs. Hodges, 10 Hare, 158.

Nor can a defendant demur for multifariousness on the ground of another defendant who does not object.

As to whether the including of different matters in the same suit renders it multifarious, the rule seems to be that each case is to be governed by its own circumstances.

Multiplicity of suits should be avoided. "If, for instance, a father executed three deeds, all vesting property in the same trustees and upon similar trust, for the benefit of his children, although the instrument and the parties beneficially interested under all of them were the same, it would be necessary to have as many suits as there were instruments, that is a proposition to which I do not assent. It would, indeed, be extremely mischievous if such a rule was established in point of law. No possible advantage could be gained by it, and it would lead to a multiplicity of suits in cases where it could answer no purpose to have the subject matter of contest split up into a variety of separate bills."

Lord Cottenham in *Campbell vs. Mackay* (7 Simon, 564), and in 1 M. & C. 602 quoted in *Gaines vs. Chew*, 2 Howard, 643.

And in *Campbell vs. Mackay*, 1 M. & C. 603, Lord Cottenham held that where the plaintiffs have a common interest against all the defendants in a suit as to one or more of the questions raised, so as to make them all necessary parties for the purpose of enforcing that common interest, the circumstances of the defendants, being subject to distinct liabilities in respect to different branches of the subject will not render the bill multifarious.

1 Dan. Ch. Pl. and Pr., 337.

See also especially *Oliver vs. Pratt*, 3 How. 411.

This Court in *Shield's vs. Thomas*, 18 How., 253, in an analogous case, fully reviews the law on this subject as follows:

" There is perhaps no rule established for the conducting of equity pleadings, with reference to which (whilst as a rule it is universally admitted) there has existed less of certainty and uniformity of application, than has attended this relating to multifariousness. This effect, flowing perhaps inevitably from the variety of modes and decrees of right and interest entering into the transactions of life, seems to have led to a conclusion rendering the rule almost as much an exception as a rule, and that conclusion is, that each case must be determined by its peculiar features. Thus Daniel, in his work on *Chancery Practice*, Vol. 1, p. 334, quoting from Lord Cottenham, says: 'It is impossible, upon the authorities, to lay down any rule or abstract proposition, as to what constitutes multifariousness, which can be

made universally applicable. The cases upon the subject are extremely various, and the Court, in deciding upon them, seems to have considered what was convenient in particular cases, rather than to have attempted to lay down an absolute rule. The only way of reconciling the authorities upon the subject is, by adverting to the fact that, although the books speak generally of demurrers for multifariousness, yet in truth such demurrers may be divided into two distinct kinds. Frequently the objection raised, though termed multifariousness, is in fact, more properly misjoinder; that is to say, the cases or claims united in the bill are of so different a character that the Court will not permit them to be litigated in one record. But what is more familiarly understood by the term multifariousness, as applied to a bill, is, where a party is able to say, he is brought as a defendant upon a record, with a large portion of which, and of the case made by which, he has no connection whatever.'

Justice Story in his compilation upon equity pleading, defines multifariousness in a bill to mean 'the improperly joining in one bill, distinct and independent matters, and thereby confounding them.' And the example by which he illustrates his definition is thus given: The uniting in one bill several matters perfectly distinct and unconnected against one defendant, or the demand of several matters of a distinct and independent nature against several defendants in the same bill. Sir Thomas Plummer, V. C., in allowing a demurrer which had been interposed by one of several defendants to a bill on the ground that it was multifarious, remarks, that 'the Court is always averse to a multiplicity of suits, but certainly a defendant has the right to insist that he is not bound to answer a bill containing several distinct and separate matters relating to individuals with whom he has no connection.' *Brooks vs. Lord Whitworth*, 1 Madd., 89. Justice Story closes his review of the authorities upon this defect in a bill, with the following remark: 'The conclusion to which a close

survey of all the authorities will conduct us, seems to be, that there is not any positive, inflexible rule as to what, in the sense of a Court of Equity, constitutes multifariousness, which is fatal to a suit on demurrer.' To bring the present case to the standard of the principles above stated, the appellees are seeking a subject, their title to which is common to them all, founded in the relation they bear to a common ancestor. The different portions of shares into which the subject may be divisible amongst themselves, can have no effect upon the nature or character of their title derived as above mentioned; and which in its character is an unit, and cannot be objected to for inconsistency or diversity of any kind. They seek an account and the recovery of a subject claimed by their common title, or an equivalent for that subject, against persons charged with having, by fraudulent combination, withheld and diverted that subject, and who, by such combination and diversion, rendered themselves equally, jointly and severally liable therefor. Upon the face of this statement it would be consistent neither with justice nor convenience nor consistent with the practice, to turn the appellees round to an action or actions at law, for any aliquot parts of each upon a division of this subject claimed under their common title, and which aliquot portions would have to be ascertained by an account which would not depend upon the question of liability of the defendants. The like principles and considerations would in every case of equal responsibility in several persons, instead of condemning, commend, and in a Court of Equity would command, wherever practicable, a common proceeding against all to whom such responsibility extended."

Shields vs. Thomas, 18 How., 253.

The exceptions filed to the answer for impertinence, necessarily admit the truth of the allegations to which they are filed. The rule is laid down in *Van Rensselaer vs. Bruce*, 4 Paige, 176, that for the purpose of determining whether or not certain allegations in the answer are subject to exception for impertinence, not only the part excepted to, but every other part of the answer must be taken as true. "And each exception for impertinence must be supported in toto, and if it includes any passage which is not impertinent, it must fall altogether."

Van Rensselaer vs. Price, 4 Paige Ch. Rep., 176.

Exceptions for impertinence must describe the particular passages alleged to be impertinent so that the opposite party would be apprised of what was stricken out, and the proper officer of the Court would know what was to be expunged, if the exceptions are sustained.

Whitmarsh vs. Campbell, 1 Paige Ch. Rep., 645.

Equity Rule 36 of the Supreme Court of New Mexico, in force when this suit was tried contained substantially the same provision. If it does not plainly appear what was stricken out on these exceptions, the Court committed error in sustaining

them. But the Court below has pointed out what was stricken out on the exceptions. In its opinion, it says:

"The complainant in this cause excepted to so much of the answer as set up matters relating to the estate of the elder Perea, upon the ground of impertinence, and demurred to the cross-bill for the reason that the matters alleged therein were not german to this action, and that it sought to make new parties and was multifarious. The exceptions to the answer were sustained. And, while there is no order in the record to that effect, it is conceded by counsel on both sides that the demurrer was sustained, and the cross-bill dismissed in the Court below; that it was so treated by the parties in said Court; and it is contended here that this Court should so treat it, and pass upon the question as if the record showed the order sustaining the demurrer and dismissing the cross-bill. To this proposition we give our assent; and we shall proceed to determine whether or not there was any error in sustaining the exceptions and demurrer and dismissing the cross-bill.

If the Court below was of opinion that the matters set up in the answer were immaterial and tended only to embarrass the litigation, it properly sustained the exceptions. There was a large amount of money ready for distribution among the heirs of the decedent minor child, and that there might be a further large sum recovered at some future time was not a sufficient reason to delay distribution of that which was ready for distribution."

Record, page 233.

It clearly appears that the matter relating to the estate of Jose L. Perea, Sr., and alleging that Jose L. Perea had not received his full share of that estate, that it had not been fully settled, and that the complainant had assets under his control belonging to said minor's estate was all stricken out.

"If the matter of an answer is relevant, that is, if it can have any influence whatever in the decision of the suit, either as to the subject matter of the controversy, the particular relief to be given, or as to the costs, it is not impertinent."

Van Rensselaer vs. Bruce, 4 Paige Ch., 177.

Tucker vs. Chesire R. R. Co., 21 N. H.
38-39.

We submit that the sustaining of these exceptions was not a matter of discretion with the Court—these allegations taken with the allegations in the bill and the other matters of the bill, if true, furnished the defendant a complete defense to the complainant's suit. If, as the answer alleged in substance that the complainant was liable to the said infant's estate for a very large amount of money, an amount largely in excess of his interest in the infant's estate; that said complainant and his co-administrators had failed to collect debts belonging to the common ancestor's estate, and had pretended to turn over parts of debts to the ward; that said complainant and his co-administrators were so indebted for a large amount of money, not only on account of what was due to the said infant's estate, but also on account of what was due to her and her infant son Grover William Harrison as heirs and distributees of the said infant, and for what was due to her as the surviving widow of Jose L. Perea, Sr. This was certainly relevant and, if true, furnished a complete defense to the whole or a part of the relief prayed by complainant's bill. The extent of the defense would depend on the proofs. It was impossible for the Court to do justice between the parties without permitting the allegations to re-

main in the bill, and let the proofs be offered. The record shows that the master properly received no proofs on these allegations, after this ruling by the Court. The offer of such proofs would have been nugatory. It is wholly immaterial that the Court by its III finding of fact states that the guardian "became possessed of all the assets and property of the said Jose Leandro which he inherited from his deceased father." By its rulings on these exceptions and the sustaining of the demurrer to the cross-bill, it held this fact to be irrelevant and immaterial, it deprived defendant of the opportunity to prove the facts, and then, without any evidence whatever, upon which to base its conclusion, finds the fact against the defendants. The quotation from the opinion above made shows this conclusively. The Court says: "That there might be a further large sum recovered at some future time was not a sufficient reason to delay distribution of that which was ready for distribution." It seems to make no difference to the Court that these allegations state that this further large sum of money was in the hands of the complainant and he was responsible for it. The Court does not explain why that was not as much ready for distribution at the time of the filing of this bill as that with which he seeks to charge the defendant.

The rule is, as we have shown, that these facts, for the purpose of the exceptions to the answer and the demurrer to the cross-bill stand admitted.

III.

When it is said that the ruling of a Court as to multifariousness is a question of convenience as enunciated in the authorities above cited, it is not meant that a Court can turn a defendant out of Court and refuse to permit him to put in his defense, either by answer or cross-bill when the matter he urges would furnish a defense to a bill filed against him. If this is a matter of discretion in the case of an original bill, it is not so when an answer sets up affirmative matter and the defendant is sought to be deprived of his defense by exceptions for impertinence.

The defendant was entitled to relief upon the allegations of the cross-bill. He was entitled to the accounting asked for by the cross-bill, if they were true. The demurrer admitted them to be true. The Supreme Court of New Mexico has held that such a suit could be maintained as an original suit.

Perea vs. Barela, 6 N. M. 239.

This was held upon the authority of *Payne vs. Hook*, 7 Wall, 425.

The defendant could get no affirmative relief without filing a cross-bill. The allegations in the answer were effective for purposes of defense, but the cross-bill was necessary for the defendant to secure a decree against the complainant. The dismissal of the cross-bill under these circumstances is certainly not

an exercise of discretion which an Appellate Court will not review.

IV.

The complainant as administrator of the estate of Jose L. Perea, Second, was liable in a suit for an accounting and settlement of the estate of his intestate for any assets in his hands, or for which he was accountable, whether received before or after his appointment as such administrator. It was immaterial that the allegations stricken out of the answer sought to charge him with assets under his control as administrator of the estate of his and the deceased minor's father, which were received prior to the infant's decease. If he received them, he was liable to the deceased minor; he was equally liable to any distributee of said minor against whom he was asking for a full and complete settlement of the minor's estate. As to the liability of an administrator and his sureties, it is said:

"So too (are included) effects left in the executor's or administrator's hands and property which has come to his possession or knowledge and remains unaccounted for; and this, even though he received the property before his appointment; since the liability

extends to assets before as well as after the execution of the bond."

Schouler's Admin. and Exec., Sec. 146.

To the same effect see Choate vs. Arlington, 116 Mass., 552.

"They (co-executors) are not liable to each other, but each is liable to the cestuis que trust to the full extent of the funds he receives."

Edmonds vs. Crenshaw, 14 Peters, 169.

V.

The first three grounds of demurrer to the cross-bill were upon the ground that the cross-bill was for an accounting as to matters relating to the deceased infant's interest in his father's estate, which was in the hands of the complainant as one of the administrators of said estate. As complainant's bill prayed for a full and complete accounting and settlement of said deceased infant's estate, it is difficult to see how such an accounting and settlement could be had without taking into account the part of said infant's estate for which complainant was responsible as well as that for which the defendant was responsible. (Record, folio 84.)

The fourth ground of demurrer is that said cross-bill is against the said complainant Pedro Perea and Mariano Perea, as administrators of Jose Perea, Sr., who as such administrators are neither parties of complainant nor defendant in said original bill. As to this contention, it is enough to say that the jurisdiction of a Court of Chancery as such, in a case like this, does not depend upon the representative character of the parties alone. The jurisdiction is taken upon the ground of a trust. These parties were before the Court and the complainant was asking for a full settlement and accounting as to his intestate's estate. He was asking for a recovery from the defendant for the interest in the estate to which he and said Mariano might be entitled. If that ground of demurrer is good, then it follows that the complainant's bill was filed upon a mistaken theory—that is to say, that a full accounting and settlement of said estate could be had in this suit.

The fifth ground of demurrer does not materially differ from the first three.

VI.

All the parties interested in both estates were before the Court except Jesus M. Perea. He was dead, and the answer and cross-bill alleged that there had been no administration on his estate. No objection was urged by the complainant that there was any defect of parties. The parties to both the original and cross-bills are the same.

In the case of *Nelson vs. Hill*, 5 How., 127, this Court held that where there were two mercantile firms and some members common to both, a creditor's bill was not multifarious when filed against the personal representatives of two of the deceased partners of the two firms and also against the surviving partner of one of the firms. This Court reversed the Court below for dismissing the bill on the ground of multifariousness. Our case is certainly stronger against the claim of multifariousness. All the parties are equally before the Court in whatever capacity they may be sued. The bill prayed "That a final decree may be entered for a settlement of said estate and the distribution thereof, and that your orator as surviving administrator be decreed his reasonable expenses including solicitor's fees against said George W. Harrison individually and as administrator as aforesaid, in and about this suit &c.," and the Court proceeded to render a decree against said defendant individually. In other words, the defendant is to be held liable in his individual capacity for assets in his hands on a prayer for a full and complete settlement of the intestate's estate, but when he asks that at the same time complainant be held to account for assets in his hands in which the defendant is interested, he is to be denied relief upon the ground that the de-

fendant holds such assets in a representative capacity. This, too, despite the fact that the defendant, if liable, is so in his representative capacity as administrator of his deceased wife.

VII.

The cross-bill alleged that another son of the said Guadalupe and Jose L. Perea, Sr., had died since the said Jose L. Perea, Sr., leaving surviving him as his heirs at law, the said Guadalupe his mother, and that she was entitled to all and singular the property, estate and effects to which he was entitled as the son of said Jose L. Perea, Sr. (Record, folio 58.) She claimed through her own right as widow and both her sons, Jose L., Segundo, and Julian, who died after their father, Jose L., Sr. The defendant George W. Harrison, and Grover William, issue of the defendant and the said Guadalupe, claimed through the said Guadalupe and the said Jose L., 2nd, and Julian. If it is contended that the Court was right in sustaining the exceptions to the answer, and the demurrer to the cross-bill so far as they attempted to set up interests claimed through Julian and Guadalupe in the estate of Jose L. Sr., it certainly was in error in sus-

taining the exceptions and demurrer as to interests claimed through Jose L., 2nd in the estate of his father. The original bill asked for a full and complete settlement of the estate of Jose L., 2nd. It could not be had without ascertaining what his interest in his father's estate was. Assuredly the complainant ought to have been held liable for what was in his hands.

Exceptions to an answer cannot be sustained unless good in toto.

Finch vs. Cheese, 1 Beavan, 571.

Balcom vs. N. Y. Life Ins. & Trust Co., 11
Paige Ch. 455.

1 Dan. Ch. Pl. & Pr. 759 and note.

The demurrer also went to the whole of the cross-bill, and being too broad, should have been overruled.

"It is an established and universal rule of pleading in chancery that a defendant may meet a complainant's bill by several modes of defense. He may demur, answer and plead to different parts of the bill, so that if a bill for discovery and relief contains proper matter for the one and not for the other, the defendant should answer the proper and demur to the improper matter. *But if he demurs to the whole bill, the demurrer must be overruled.*"

Livingstone vs. Story, 9 Peters, 658.

See also Giant Powder Co. vs. California
Powder Co., 98 U. S., 126.

The demurrer to the cross-bill and the exceptions to the answer were submitted at the same time in the District Court. (Record folios 86-87.) The Supreme Court as well as the parties to the suit, treated

the demurrer as having been sustained by the Court and the cross-bill dismissed. (Record, page 233.)

VIII.

According to the allegations stricken out of the answer and the cross-bill, neither the estate of Jose L. Perea, Second, nor that of his father had been settled. The latter had only been partially settled and distributed. The parties interested in both estates were the same, and were all before the Court except Jesus M. Perea, who was made a party to the original suit, but died after the suit was brought. If necessary, the suit could have been revived as to him. If he was a necessary party to the cross-bill, he was also a necessary party to the original bill. Guadalupe Perea de Harrison, as already shown from the allegations of the cross-bill, claimed a further interest in her deceased husband's estate on her own account and through her two deceased sons, Jose L., 2nd, and Julian. The latter had died prior to the death of Jose L., 2nd, and prior to the enactment of the distribution act passed by the Legislature in 1887. As the law stood when he died, all his estate passed to his mother.

Compiled Laws of New Mexico (1884) Title XX, Chaps. III and IV, Section 1436, is as follows:

"In the absence of children or descendants the nearest ancestors become heirs, such as parents, and in the absence of these the paternal or maternal grand parents."

This was changed by the act of 1887, so that the mother inherited one-half her deceased son's property, the other half going to his surviving brothers and sister's. See Laws of 1887, page 60.

IX.

Under the facts as alleged, the defendant was entitled to an accounting as to both estates.

In *Purefoy vs. Purefoy*, above cited, it was held that a bill for an accounting only as to one estate, under such circumstances, was demurrable.

Purefoy vs. Purefoy, 1 *Vernon*, 29.

1 *Daniel's Ch. Pl. and Pr.*, 336.

"Where the same parties claim the benefit of both estates and they are so connected that the account of one cannot be taken without the other, the joinder in the same suit will not be multifarious."

1 *Daniel's Ch. Pl. and Pr.*, 344, *supra*, and authorities cited.

Neither does the fact that rights are claimed against the complainant both as administrator and individually, or that the defendant claimed in a dual capacity render the bill multifarious.

The Supreme Court of Massachusetts, where a suit was filed by a widow as complainant, asserting rights in property both as administratrix and widow, held that the bill was not demurrable, saying:

"This is a bill in equity, to which the defendant demurs for several causes. The first is, that the plaintiff is the widow of Thomas Robinson, mentioned in the bill, and the administratrix on his estate, and claims the right to maintain the suit in both capacities. And this, it is argued, renders the bill multifarious. The opinion of Story, J., in the case of *Carter vs. Treadwell*, 3 Story R. 51, is cited in support of this objection. 'The bill,' Judge Story says, 'is open to the objection of multifariousness in mixing up an independent claim of Carter's' (the plaintiff) 'in his own right, with the transactions of Adams with the defendant, with which he had nothing to do, except in his capacity as administrator.' Such, however, are not the facts in the present case. The plaintiff claims, in both capacities, under the said Thomas Robinson. Both claims are homogeneous in their character, and it is immaterial to the defendant, in which capacity the plaintiff claims. This case comes within the rule of pleading laid down by Daniel, and which is supported by the cases cited by him: Where the plaintiff claims the same thing under different titles, the statement of them in the same bill will not render it multifarious. 1 Daniell Ch. Prac., 395."

Robinson vs. Guild, 12 Metcalf, 323.

See also Story's Eq. Pl., Secs. 254, 271, 280.

The complainant brought his suit in behalf of himself as sole surviving administrator of Jose L. Perea, 2nd, and as one of the heirs at law of the said Jose L. Perea, second, deceased, against George W. Harrison individually and as administrator of the estate of Guadalupe Perea de Harrison. (Record, folio 3.) He asks for a decree in his favor as heir-at-law against the defendant in his dual capacity, and the Court renders a decree against the defendant in his individual capacity. Yet it is contended that the defendant in this suit could not have an accounting against him either as administrator or individually. Under the allegations in the cross-bill, the complainant and the defendant Mariano Perea, co-administrators of the estate of Jose L. Perea, may have been liable to the defendant on account of his interest in the estate of said Jose L. Perea, 2nd, in a sum of money largely exceeding the amount decreed against him. The Court cannot deny the right of the defendant to an accounting against the complainant, and said Mariano Perea for assets belonging to the estate of Jose L. Perea, Sr., and a share of which he longed to said deceased minor and his mother, upon the ground that to do so is to sue them as administrators, and then render a decree in the same cause against the defendant in-

dividually for assets which were in the hands of his intestate as administratrix.

XI.

The complainant contended in the Court below, and the master found, that upon the appointment of Guadalupe Perea de Harrison as administratrix of her deceased son, she ceased by operation of law, to hold such assets belonging to her estate as were then in her hands as guardian, and thereafter held them as administratrix. Appellant is disposed to concede this proposition.

Sugar vs. The State, 6 Harris and J., 162,
14 Am. Dec., 265.

Appellant insists, however, that the principle is equally applicable to the appellee, Pedro Perea, and that when he was appointed administrator of the estate of Jose L. Perea, 2nd, the share of said decedent in the undistributed assets of his father's estate *passed by operation of law from him as his father's administrator to him as administrator of the deceased minor, Jose L. Perea, 2nd.* This furnishes an additional

reason for holding him to account for such assets in this suit.

XII.

The 16th assignment of error is as follows:

"The Court erred in rendering a decree in this cause against the defendant in his individual capacity, when upon the facts, if he is liable at all, he is liable as administrator of Guadalupe P. Harrison." Folios 363 and 366.

A decree against an administrator for the liability of his intestate, upon whatever state of facts the liability arises, is *de bonis intestatoris*, and should not lie against him individually.

In *Foster vs. Wilber*, 1 Paige, Ch. 541, Chancellor Walworth, where an accounting was sought against executors of an executor, for assets which had been in the hands of his testator, in his representative capacity said:

"The appellants, therefore, are not the executors of Wilber, and have nothing to do with his estate. If their testator had made himself liable by maladministration, they are liable as debtors to that estate, to the amount of the assets of Murphy (their testa-

tor) in their hands, to be paid in a due course of administration."

Foster vs. Wilber, 1 Paige, Ch. 541.

In another case where the decree was personal the same Chancellor said:

"Such a proceeding was improper and wholly unauthorized, if the account of Sanger's estate was to be settled as upon the application of the petitioners as his creditors and the surrogate has decreed the payment of the amount found due upon that accounting, out of the estate of Sanger (the deceased executor) in the hands of his executors; but without making a single inquiry for the purpose of ascertaining whether the estate of Sanger was sufficient to pay all his debts or even the amount of this decree."

Dakin vs. Deming, 6 Paige, Ch., 98.

It may be contended that a personal decree against the defendant is justified by the master's 9th finding of fact, that the defendant from the time of his appointment as administrator of the estate of his deceased wife, refused to account with the complainant as surviving administrator of Jose L. Perea, Segundo; "but retains said estate mingling the funds with his own, having the same deposited to his individual credit in bank, claiming that Guadalupe Perea de Harrison, his late wife, did not hold said estate by virtue of her appointment as administratrix thereof, because of her appointment as guardian of said minor." Record, folio 119.

The Supreme Court finds as facts that on the 23d day of July, 1884, Guadalupe Perea was appointed guardian, and as such, became possessed of all the assets and property the ward inherited; that on September 2nd, 1885, the defendant married the said

Guadalupe Perea, widow as aforesaid; that immediately after the intermarriage, the said defendant took charge and control of the affairs of said Guadalupe, including the assets of said minor; that he reduced the assets of said minor to money and mingled the same with his own funds and deposited the same in bank to his individual credit, and at the time of final decree in the case in the District Court, he retained subject to his individual control, all of the moneys belonging to the estate of Jose Leandro Perea, Segundo. It further found that complainant and Guadalupe P. Harrison were appointed joint administrators of the estate of the deceased minor on September 5th, 1887; the said Guadalupe qualified on October 1st, 1887; that after the death of the minor, *the said Guadalupe P. Harrison, during her lifetime, and George W. Parrison after her death* claimed to hold the said assets of the said Jose L. Perea, Segundo, not as administrator upon the pretense that there could be no distribution of such assets until the final account of Guadalupe Perea de Harrison as guardian was settled by the Probate Court. (Record folio 372.)

It appears from the findings of fact that the estate was in money and if converted and mingled, this had been done prior to the death of Guadalupe P. de Harrison.

The master found that "after the death of Guadalupe Perea de Harrison, Pedro Perea, the surviving administrator, was the only person entitled to the possession of the estate of said Jose L. Perea, Segundo, and G. W. Harrison by retaining possession of said estate and refusing to deliver the same over to said administra-

tor became liable for the proper management and control thereof." The Supreme Court followed his finding of law in this particular, and appellant insists that it is error.

Creditors of a deceased debtor cannot affect a third person as trustee on account of property wrongfully received from the administrator of the debtor, unless it is shown that there is no remedy against the administrator and his sureties. In such a case, Chancellor Walworth said:

"There is nothing in this, therefore (the estate on appearing to be insolvent) to show that the complainant has not a perfect remedy against the administratrix and her sureties for the amount due upon his judgment. He has then no right to follow the personal estate into the hand of a third person, to whom, if the allegations of the bill are true she has paid it of her own wrong."

Jackson vs. Forrest and Leggett, 2 Barbour's Ch., 576.

This case holds that a bill against a third person seeking to hold him individually on account of assets wrongfully transferred to him by the administrator and at the same time making the administrator a party praying as against her for an accounting as to the estate, was multifarious. If the estate is not insolvent and the assets in the hands of the administrator are sufficient to satisfy all demands against it, it is immaterial what disposition has been made of other assets by the administrator or the decedent in his lifetime. It is only when proceedings against the administrator are unavailing that third persons can be called to account for assets in their hands. If

recourse is attempted to be had against the administrator and the third person for assets in his hands at the same time without alleging and showing that the recourse against the estate is fruitless, the bill, according to Chancellor Walworth, is multifarious. The fact that the third person received assets from the decedent in his lifetime, and afterwards became his administrator, does not change the principle. The defendant individually and the defendant as administrator of his deceased wife are as distinct in law as if there were two different persons, and the circumstance that the transactions took place between him and his wife is in no way material.

XIII.

According to the authority last cited, there were no allegations in that original bill which would justify a decree against the defendant individually. To support a decree, there must be allegations and proofs to sustain them.

Sims vs. Guthrie, 9 Cranch, 19.

Crocket vs. Lee, 7 Wheat., 522.

Carneal vs. Banks, 10 Wheat., 181.

Harding vs. Handy, 11 Wheat., 103.

Harrison vs. Nixon, 9 Peters, 483.

Neither the findings of the master nor of the Territorial Supreme Court justify the decree against the defendant individually or the rate of interest charged.

The assets of the estate of the deceased minor upon the death of Guadalupe P. de Harrison, became a part of her estate in the hands of her administrator, and the claim of the surviving administrator to recover it, was a debt against her estate. The commingling as found by the master and the court was a commingling of the estate of his own intestate before her death with his own property. As to this the complainant is not concerned until he shows that the decedent's estate is insolvent and that his debt cannot be made out of it.

XIV.

No accounting can be had against the defendant George W. Harrison individually, and no decree against him to turn over property to the surviving administrator, unless the specific property for which he is held responsible individually, or which he is ordered to turn over, be identified and distinguished

from other property of his intestate, the deceased administratrix, in his hands.

"B, administratrix of her son P, died without having rendered an account. The inventory filed by her showed assets of the value of \$3,772.03. By her will, O was appointed her executor, and he filed an inventory of her estate showing assets of the value of \$13,000, but he could find no property or fund which could be identified as being held by her as P's administratrix. O, as executor, advertised for and paid all claims presented, applied for a judicial settlement and, under a decree of January, 1882, distributed B's estate among her four children. In December, 1884, certain grandchildren of B applied to the surrogate for an order compelling O, as executor, to account for the funds received by B, as administratrix of P. Held, that the petition was properly denied. Petitioners were in the position merely of creditors of B's estate, their vested rights in the fund having been lost by the inability to distinguish it from the other property of B."

In re O'Brien, 45 Hun's, 284.

The bill was not framed upon the theory that any specific property was in the hands of the defendant which could be identified as belonging to estate of the deceased minor. It did not pray that he be held accountable for, or turn over any specific property. It seeks to charge him for assets that remained in the hands of his deceased wife, at the time of her death, and for which she was accountable. The decree must follow the bill, and neither the bill, proofs, nor findings of fact justify a personal decree against him.

The VIII finding expressly states that said Guadalupe P. Harrison during her lifetime claimed to hold the assets of the estate of the said Jose L. Perea as

his guardian. By the X finding the Court finds that after her death he was in possession of the assets of said minor's estate. It does not identify any of said assets or find that he was in possession of them in any way different from that in which he was in possession of the balance of her estate. The commingling found had taken place before her death.

XV.

The personal representative of a deceased executor or administrator cannot be called upon to settle the accounts of his testator or intestate.

Reed vs. Wilson, 73 Wis., 497 (41 N. W. Rep., 721.)

Schench vs. Schench's executors, 3 N. J. Law, 562.

Dakin vs. Deming, 6 Paige Ch., 95.

Bush vs. Lindsley, 44 Cal., 121.

In re Fithian, 44 Hun., 457.

Tracey vs. Hadden, 78 Ill., 30.

“Upon a trustee's death he ceases to be a trustee, and as to him the trust no longer continues. His indebtedness to the trust becomes a demand against his

estate to be authenticated, allowed, classed and paid out of the assets of his estate as other demands."

Hill vs. State, 23 Ark.; 5 Am. & Eng. Enc. of Law, 212.

"Where a co-executor dies his estate becomes liable for everything that he was liable for at the time of his death."

11 Am. & Eng. Enc. of Law, 1,032.

"The executor of an administrator can not be charged as the representative of the original intestate."

7 Am. & Eng. Enc. of Law, 206; Arline vs. Miller, 22 Ga., 330.

Scott vs. Fox, 14 Md., 388.

Foster vs. Wilber, 1 Paige's Ch., 537.

Trescott vs. Trescott, 1 McCord's Ch., 417.

Smith vs. Moore, 4 N. J. Eq., 485.

The rule of the common law was that upon the death of an executor, the executorship devolved upon his executor, but as to joint administrators or executors the rule of survivorship applied.

7 Am. & Eng. Enc. of Law, 204.

And at common law the executor of a deceased executor was not liable for a devastavit committed by his predecessor.

7 Am. & Eng. Enc. of Law, 333, and cases cited.

In equity the practice has been to charge the per-

sonal representative with the consequences of a breach of trust, and this is the rule as to executors and administrators.

7 Am. & Eng. Enc. of Law, 334.

The rule has always been, however, as already stated, to hold the representative responsible, only to the extent of the assets of his decedent, or for specific property traced to his hands.

Nor can an executor be compelled to account in the same proceeding for the property of his own testator, and that held by his own testator in his representative capacity.

See *Murray vs. Vanderpoel*, 2 Demarest (N. Y.,) 311, and cases cited in 7 Am. & Eng. Enc., 206 and notes.

An action for a legacy under the will of the first testator cannot in Pennsylvania be maintained against the executor of an executor.

Gilliland vs. Bredin, 63 P. St., 399.

In North Carolina the Courts have held that a legatee can sue the executor of an executor, who has in his hands funds of the first testator, although creditors can not do so. But it is necessary to take an account of the assets of the second testator.

Brotten vs. Bateman, 2 Devereux Eq., 115,
(22 Am. Dec., 734.)

All these citations serve to illustrate and strengthen the position of the defendant that the only decree

that could be rendered in this cause under the allegations and proofs, was against the defendant as administrator.

XVI.

The Court erred in following the master and charging the defendant with interest on the balance found due at the rate of six per cent per annum. (See the 9th assignment of error.) The bill charges that the defendant after the death of his wife and after he qualified as administrator refused to turn over to complainant assets which had been in her hands. (Record, folios 12-13.) The master by his 9th finding of fact (Record, folio 119) and the Court by its XII (Record, page 229) and its decree (Record, page 221) charge the defendant with interest as above stated. Appellant insists that he should not have been charged with interest under the facts and circumstances of this case.

We have already shown that the defendant was not accountable for said estate to complainant and that it was not defendant's duty to account to complainant.

The cases above cited show this.

Dakin vs. Deming, 6 Paige, 95.

Reed vs. Wilson, 41 N. W. Rep., 719.

Schenck vs. Schenck, ex rs., 3 N. J. L., 562.

Bush vs. Lindsey, 44 Cal., 121.

Tracey vs. Hadden, 78 Ill., 30.

The case of Reed vs. Wilson, *supra*, hold that when by statute it is provided that upon the death of a personal representative the administration shall not pass to the personal representative of the deceased administrator, such personal representative cannot be called upon to settle the estate of the first intestate. That he is a stranger to the first intestate's estate. The result follows here, not by statute, but by the survivorship of the complainant, as co-administrator of the deceased. Some of the authorities above cited hold that the claim can be presented to the Probate Court. Where the claim of an heir to his distributive share was not paid before the administrator died, and it was presented as a claim against his estate and allowed, the Court said:

"This, she had a perfect right to do. She could elect to present her claim against the estate, or proceed on the official bond of the deceased administrator. She chose to do the former, and we are at a loss to understand what objection can be urged against the proceeding."

Tracey et al., Admin., vs. Adams, 78 Ill., 30.

In Bush vs. Lindsey, 44 Cal., 125, the Court says: "We are referred to no provision of the Probate Act, which authorizes the Probate Court to cite the administrator of an administrator, to settle the account of his intestate with the estate of which he was the administrator, and, after a careful examination of

the Act, we find none which confers that authority. The power must be lodged in some tribunal, to require such an account to be taken and settled; and if the Probate Court does not possess it it must reside in the District Court, as a branch of its equitable jurisdiction. Those who are interested in the estate have an undoubted right to recover from the administrator the money and property remaining in his hands, which belong to the estate; and in order to ascertain the amount of such money and property, an account must be taken. Proceedings having that object in view, bear clearly marked equitable features, and jurisdiction thereof pertains to the District Court; and that Court has competent authority to hear and determine the matter, unless the Probate Court possess the exclusive jurisdiction.

The Court then discusses the California statutes and constitution, and concludes that the Probate Court had no jurisdiction. This is not the important point for us, but what concerns us, is that the defendant was under no obligation to deliver the value of the estate received by his intestate to the complainant. *In fact he could not lawfully do so*, and it was necessary that proceedings, either in equity or before the Probate Court, should be had. While these proceedings are being had is the defendant to be compelled to pay interest? Is this true especially in view of the facts in this case? It was contended by defendant's intestate that the complainant and his co-administrators of the estate of Jose L. Perea, Sr., had never accounted to her for her full interest, or that of Jose L. Perea, 2d, in his father's estate, and she had brought suit against said administrators for a settlement of the estate of said Jose L. Perea, Sr., Under such circumstances the law does not justify the charging of interest against the defendant personal-

ly, or as administrator, from January 6th, 1890, the date of his appointment as administrator.

"Interest on assets is not chargeable against executors and administrators as of course, but may be charged as the circumstances of the particular case may warrant."

Walker vs. Walker, note 99 Am. Dec., 296.

"But if those interested in the estate have been equally guilty of laches in protracting a settlement, interest is not chargeable."

Forward vs. Forward, 6 Allen, 494.

"So if there are circumstances rendering it unsafe or injudicious for an administrator to proceed to a settlement and to a distribution of the assets, as if suits were pending, or there was a just reason to anticipate the commencement of suits, or if there was any other necessity, upon which he acted in good faith, in keeping the money he should not be made liable for interest. Clark vs. Knox, 70 Ala., 607. * * * What time is an unreasonable delay in making settlement and distribution, is, therefore, said to depend on the circumstances of each case—that is on the situation and condition of the estate, the complication of its affairs, and the obstacles to an earlier settlement."

99 Am. Dec., 297, and cases cited.

"But the mere fact that he mingles the money of the estate with his own by depositing it in his own name as he does his individual money, cannot be held a sufficient ground to charge him with interest. So long as he has the money of the estate at his command, ready to answer the order of the Court, this is all that the law requires. Estate of Schofield, 99 Ill., 513. * * * Nor will he be charged with interest where it is not certain that he used the money of

the estate for his own profit, there being a mere suspicion that he did. Grant vs. Edwards, 93 N. C., 488."

All the foregoing authorities apply to the question of the liability of the estate of Guadalupe Perea for interest. There can be no question that Harrison is not liable for it, because any dealing of his after the death of the intestate was with *her estate*, not the *deceased minor's* and he is not accounting for that in this suit, and could not be so held to an accounting as already shown.

XVII.

The fact that his co-administrator did not in her lifetime, turn over funds in her hands, did not justify the Court in following the master's fifth finding of fact (Record, page 73) and by its decree (Record, page 222) that the sum of \$30,361.24 was the amount due on account of said minor's estate. This sum was arrived at by the master by charging interest at six per cent upon each item received by the guardian from the date of its reception to the date of his finding.

The bill alleges that Guadalupe P. Harrison re-

fused to recognize complainant as administrator and continued to claim that she held the assets in her hands as guardian. After she became his co-administratrix she was not bound to turn over the assets in her hands.

"One executor having received funds can not exonerate himself, and shift the trust to his co-executor by paying over to him the sums received. Each executor has the right to receive the debts due to the estate and discharge the debtors; but this rule does not apply as between the executors. They stand upon equal ground, having equal rights, and the same responsibilities. *They are not liable to each other*, but each is liable to the cestui que trusts, to the full extent of the funds he receives. (Douglas vs. Satterlee, 11 Johns', 16; Fairfax, exec., vs. Fairfax, 5 Cranch, 19)."

Edmonds vs. Crenshaw, 14 Peters, 164.

If he does any act which permits his co-executor to get possession of assets in his hands, the co-executor thus doing so becomes responsible for the other one, if the latter misapplies the assets.

See 11 Am. & Eng. Enc. of Law, 1027, and numerous authorities cited.

It is not true that the guardian was called upon to act with reference to the estate until her accounts had been settled. The functions of a guardian and administrator are different and upon the death of the ward the guardian is entitled to have a final settlement in the Probate Court and a discharge as guardian, and to a decree transferring the estate to the administrators. Especially is this true if the guardian and another are appointed co-administrators.

Emmerson vs. Webster (N. Y. Supreme Court), 12 N. Y. Supplement, 789.

It is alleged in the bill that defendants intestate claimed to hold the estate as guardian after the death of her ward, and both complainant and the master and the Court below seem to have thought this important. It is wholly immaterial, since she had a lawful right to hold it as administratrix as against the complainant, and was not accountable to him for it. While it is true that by operation of law, the guardian may be held as administratrix after her appointment as such, upon the death of the ward, it is not true that she thereby became accountable to the complainant as her co-administrator for the portion of the estate in her hands.

Sugar vs. State, 6 Har. & Johnson, *Supra*.
XIX.

The Supreme Court of the territory seems to have followed the District Court and that Court followed the master, on the subject of interest, for the following reasons, the master finds, as follows:

"Neither Guadalupe Perea de Harrison nor her husband George W. Harrison, made any effort, so

far as the testimony shows, to loan the funds of said estate, or to procure an order of the Probate Court for that purpose.

"Some of the funds of said estate which were in the shape of paying investments, to-wit, sheep and bank stock, were withdrawn from such investment and converted to cash, *which produces little or no income at all.*" (Record 120.)

His findings of law applicable to these facts are as follows:

First. The powers of Guadalupe Perea de Harrison as guardian of Jose L. Perea, Segundo, ceased immediately upon the death of said ward.

Second. After appointment as administratrix of the estate of Jose L. Perea, Segundo, Guadalupe Perea de Harrison held said estate as such administratrix and not as guardian of said deceased minor.

Third. Section 1018 of the Compiled Laws of New Mexico, 1884, makes it the duty of a guardian to loan funds of the ward beyond what may be necessary for the support and maintenance of the ward, under the direction of the Probate Court; and section 1019 makes such guardian liable for interest if he fails to loan the money of his ward as aforesaid. (Record, folio 120.)

Sections 1018 and 1019 of the Compiled Laws are as follow:

"1018. If, at any time, any guardian shall have on hand any money belonging to his ward beyond what may be necessary for his education and maintenance, such guardian shall, under the direction of the court, loan the same to such persons as will give good security therefor, and such money shall be loaned on such time as the court shall direct."

"1019. If any guardian fail to loan the money of

his ward on hand as aforesaid, under the provisions of this act, he shall be accountable for the interest thereon. *Ortiz vs. Salazar*, Vol. 1, page 355, N. M. Rep."

Appellant calls attention to this because the court that she held the assets of the ward after his death as administratrix, but was responsible for interest as guardian. She was under no obligation to invest the money or lend it out when the court had not directed her to do so, after it was converted into cash, which produced, as the master found, little or no income at all. Certainly not while the contest over the settlement of these two estates was going on.

In a similar case it was held:

"The Orphans Court charged interest on the additions which they made to the accounts, from the time of filing the accounts to the time of pronouncing their decree upon the exceptions. The exceptants insist that the Court should have charged interest on those additions up to the date of the decree, and that they should have charged the accountant with interest on the balances of his accounts, as rendered by him, from the time of filing those accounts to the date of the decree. The Court decreed that he should pay interest on the money with which they surcharged his accounts, because he seems to have followed the master. He found had not accounted for that money. Had he done so, the exceptants would have been at liberty to have taken it. The Court found that it was due to the wards. It was right, on that ground, to compel the accountant to pay interest for it from the time of filing his accounts. That the period during which he was required to pay interest was not extended to the date of the decree, was probably attributable to the consideration that it was quite as much the fault of the exceptants, as it was his, that the decree of the Court was not reduced to writing when it

was pronounced. No objection is made on the part of the accountant, to the decree in respect to interest. The exceptants not only seek, by these appeals, to extend that charge of interest from the time of pronouncing the decree to the time of its date, but they seek also to charge the accountant with interest on the original balances from the time of filing the account to the date of the decree. There is no authority for charging an accountant with interest on the balance of his final account in such a case as this, unless it appears that he has made use of the money for his own purposes. The money was not invested when the accountant filed his accounts. He was under no obligation to invest it, but is presumed to have it in hand, and to have had it in hand ever since he filed his accounts, ready to be paid over whenever the balance should have been established. If, however, he has made use of the money, he is chargeable with the interest for the time he has used it, and the inquiry may be made in this Court, with a view to charging him accordingly."

In re, the Mott Appeals, 26 N. J. Eq. 512.

The Court holds that there is no authority for charging interest on the balance of his final account. That the accountant should be decreed to pay interest after filing his account only for the money with which his account was surcharged. It places its conclusions upon the ground that the accountant stood ready to pay the sums admitted. The balance by the guardian in her report filed on March 6th, 1888, was \$17,670.61. The complainant sought to surcharge the account with items amounting to \$3,383.90. The master and the Court charged her with only a part of these items. (See Exhibit C to complainant's bill, Record, pages 10 to 12. Complainant's exceptions to the Report, Exhibit D to Bill, Record, page 14.)

Half of this estate upon the death of her ward, belonged to Guadalupe P. Harrison absolutely. The defendant subsequently acquired three-twenty-sixths more in his own right and another twenty-sixth belonged to Grover William Harrison, an infant son of the defendant and said Guadalupe; nine twenty-sixths belonged to the complainant and the defendants, Jose L. Perea, Benicio F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo, Soledad Perea de Castillo, Josefa Perea de Castillo, Barbara Perea de Yrisarri. (See master's findings VII and VIII, Record, page 74.) To these findings of the master no objections or exceptions were ever filed by the complainant, but they were confirmed by the District Court. (See decree of the District Court, Record page 211.) There was no cross appeal taken from the decree rendered by the District Court. The Supreme Court affirmed the decree with slight modifications, none of which relate to these findings or the provisions of the decree based on them. (Record, page 221.) Complainant cannot question them here for the first time. To charge the defendant interest under these circumstances at the rate of six per cent upon each item of assets from the date of its reception, we submit was error. In her reports above referred to she had charged herself with dividends, interest and receipts for wool produced by sheep. The complainant could have taken steps in the Probate Court on March 6th, 1888, to have the balance shown by the guardian's report distributed, but did not do so, but waited until April, 1890, after the death of his co-administrator,

and brought this suit.

The Court of Appeals of Kentucky, where a widow was appointed administratrix of her deceased husband's estate, and upon a discovery of a will, was subsequently removed, the Court held that she was not to be charged with interest upon the whole balance in her hands. It said:

"We think she, being then entitled to have paid her share in the estate, should not be charged interest on any more of what was in her hands than may be found upon calculation to have been at that date in excess of her distributial share."

Miller's Ex. vs. Simpson, 2 Southwest Rep.
171 (Court of Appeals of Ky. Dec. 1886.)

It is true that after charging interest on the whole estate, the Court allowed the defendant to retain seventeen twenty-sixths of it, but it charged commissions and attorney's fees upon the basis of interest on the whole estate.

Under sections 1018 and 1019 of the compiled Laws, a guardian is not liable for interest because he fails to lend the funds of his ward, unless the Court orders him to do so. The statute restricts and limits the common law by requiring the Court to direct the lending—otherwise as a general rule the guardian would be required to lend the ward's money without any such direction. If the Court does not direct him to lend it, the statute does not charge him with interest. He makes his reports every year to the Court, and the Court is supposed to order him to lend the money, if in its opinion, it is proper under the circumstances to do so. If it made no such order, the presumption is that the Court did its duty and was

satisfied that the interests of the ward and his estate would not, under the circumstances, be promoted by lending the money. Under a similar statute the Supreme Court of Alabama says:

"On neither of the partial settlements was the guardian charged with interest, which was tantamount to a judicial determination that it was not practicable to lend the surplus money on bond and mortgage, or on good personal security."

The burden of proving that it was impracticable to do so is thereby removed from the guardian.

The statute of Alabama does not expressly make it the duty of the guardian to lend, under the direction of the Court, as our statute does, nevertheless the Court said:

"If the expressions in the opinion in the case of Ashley vs. Martin, 36 Ala., 330, were intended to declare that the practicability of loaning money of the ward rested on the sole judgment of the guardian they must be modified in conformity with these views."

Thompson vs. Thompson, 92 Ala., 545, 9 Southern Rep., 465.

A guardian is not liable for interest unless he is directed by the Probate Court to invest the money of his ward.

Reynolds vs. Walker, 29 Miss., 250.

See also 9 Am. & Eng. Enc. of Law, 119, citing:

Brand vs. Abbott, 42 Ala., 499.

Ashley vs. Martin, 50 Ala., 537.

State vs. Foy, 65 N. C., 265.

The Supreme Court of Missouri also held to the

same effect as the Alabama Court. In the case the curator of the estate subsequently became a trustee of the estate and suit was brought upon his bond as trustee. The sureties defended upon the ground that he had not ceased to hold the estate as curator, and that by mingling the ward's funds with his own before he qualified as trustee, he had already converted them. The Court says:

"Nor is it at all conclusive that Branch was guilty of a *devastavit* because he did not keep these funds of his ward at all times separated from his individual moneys. It was his duty to invest them for her, if he could find a safe investment. If he could not, it was his duty to report that fact to the Probate Court. The prevailing practice, fixed by statute, is to require the curator to append to his settlement an affidavit showing to whom, and on what security, he has loaned his ward's estate; and, if he has it on hand, he must state that fact also. In the absence of evidence to the contrary, we must presume the Probate Court of St. Louis required the curator to make his settlements according to law. If so, and Branch disclosed to that Court that he had the money in his own hands, and these settlements were approved, it would hardly be said there was such a wasting of the estate as would be a breach of his bond. Now, outside of this failure to keep a separate account, there is no evidence whatever tending to show a *devastavit* on 28th December, 1883; so that we think the record does not sustain appellant in saying there were no assets to transfer. Nor do we agree with him that solvency of the curator is an immaterial fact to be shown on this issue."

Titman vs. Green, 108 Mo., 22; 18 Southwest Rep., 889.

The case is also instructive on the transfer of funds by operation of law, where the same person qualifies

in a new capacity, having funds held in another. The Court says:

"But, in our view of this case, it is unnecessary to invoke a presumption so strong. The authorities, with great unanimity, agree that where the same person succeeds himself in a different fiduciary relation, or where they both exist at one time, if he is clearly entitled to the trust fund in his new capacity he is entitled to make the election, and if he does so by some affirmative, unequivocal act, from that time he will be required to account in his new trust relation."

XX.

The Court erred in holding that the complainant was entitled to receive the statutory commission, none of which he had ever received or disbursed. (See Appellant's 10th, 11th, 12th and 7th assignments of error.)

The decree finds that complainant as administrator is entitled to statutory commission upon the sum of \$35,869.70, the whole amount of the estate, with the interest for which the defendant is held responsible. This, too, although the decree allows the defendant to retain on account of his deceased wife's interest, the three shares he had purchased and that

of his infant son Grover William Harrison, seventeen twenty-sixths parts of that sum; and that he pay over to said complainant the remaining nine twenty-sixths to be distributed as directed by the decree. (Record, page 222.)

The New Mexico statute fixing administrator's fees is as follows:

"Administrators and executors shall be entitled to a commission upon the amount of money or property at the appraised value, which comes into their hands as such, of ten per cent on the first three thousand dollars, and of five per cent on all amounts above the first three thousand dollars."

Acts of 1891, Sec. 2, page 111.

The statute only allows them commission "upon the amount of money, or property at the appraised value, which comes into their hands as such."

Commissions on uncollected assets should be disallowed.

Appeal of Vanderford (Supreme Court of Penn. 1888) 12 Atlantic Reporter, 491.

Foote vs. Bruggerhof, 66 Hun's Rep. 406.
(21 N. Y. Sup. 509.)

The executor's right to commissions depends on the statute.

Gaines vs. Reutch, 64 Md. 517.

Where a will provides that the executor should "receive a commission of six per cent upon all money collected by him" held not sufficiently comprehensive to entitle the appellant to a commission of six per cent upon the amount of the entire proceeds of the estate.

Ireland vs. Corse, 67 N. Y., 343.

7 Am. & Eng. Enc., 437.

It was proper in such a case as this where a decree is rendered settling the estate, that a distributee having the whole or a part of the estate in his hands, should retain his share and merely receipt for it. It calls "useless the ceremony of paying over with one hand and immediately receiving the same with the other hand."

Williams vs. Mower, 29 S. C., 332 (7 S. E. Rep. 505.)

And why should the complainant, a co-executor, be entitled to commissions on something he was never entitled to receive, as appellant has already abundantly shown? He never did have the right to receive the share of defendant's intestate, and under the statute is entitled to commissions only on what he would receive and disburse under the decree.

This principle certainly applies to the commissions; the Court would not require the defendant's interest in the estate to be turned over to complainant to be the next instant returned, so the complainant could acquire the right to commissions. The commissions are allowed as compensation for services actually rendered, and which the law required at the hands of the administrator, and it is said that the right to them does not rest on any implied contract.

Gaines vs. Reutch, *supra*.

The allowance of any commissions whatever to be paid by the defendant on the seventeen twenty-sixths of the estate to be retained by him, was error. If the complainant is allowed commissions on all this es-

tate, why should not the guardian have her commissions on it also? As a matter of fact and law, she was entitled to compensation, and she was entitled to credit for it. As the statute does not fix any amount it devolved upon the master and the Court to fix it.

XXI.

The Court erred in charging against the fund a solicitor's fee of ten per cent of the total amount found against the defendant, thereby charging the defendant and the minor son represented by him, with \$2,345.32 of said amount. (See the decree, Record pages 222-223, XI finding of fact, Record, page 222; 15 assignment of error.)

The total amount of property in controversy, as we have shown, did not exceed the nine twenty-sixths of the estate for which Guadalupe P. Harrison was responsible in March, 1888. Her report showed \$17,670.61. Add to this \$3,383.90, the amount of the items for which the complainant sought to surcharge it, and the total amount of the estate was \$21,074.51. Nine twenty-sixths of this was \$7,294.95. (Exhibit C to complainant's bill. Record, page 10. Exhibit D to bill. Complainant's exceptions to report, Record, page 14.)

There is not a single word of evidence in the record as to the value of the legal services. The finding is wholly without any evidence to sustain it. The Court does not pretend that there was any evidence as to the value of the legal services rendered. It proceeded upon the theory that the Court did not need any evidence, but could proceed on its own knowledge—Page 234. The Court, however, differed with the master as to the proper amount, thus showing that in the absence of evidence, the amount is very much a matter of caprice. See Court's opinion, page 234.

The authorities referred to by the Court below to sustain its conclusion, with all due respect, we insist, do not sustain it. The allowance was made in *ex-parte Plitt*, 2 Wall. Jr., 453, wholly out of the fund recovered, and the case is authority only for the proposition that the Court has the power to order it paid out of the fund recovered. The compensation which counsel was to receive had previously been agreed upon. In *Trustees vs. Greenough*, 105 U. S., 527, the question of the amount was referred and proofs taken and the amount fixed in accordance therewith, and the amount paid out of the fund recovered. The case of *Fowler vs. Equitable Trust Co.*, 141 U. S. ** was a case of foreclosure where the mortgage deed of trust fixed the percentage for attorney's fee and made it a lien on the property.

The Court had no power to tax up an attorney's fee as a part of the costs in this case and order it paid into the clerk's office. The Court had no funds in its hands, and the solicitor was not a party to the suit

by intervening petition or otherwise.

Wolfe vs. Lewis, 19 How. 280.

Allowing an attorney a lien on funds or property in the hands of the Court and ordering it to be paid out of that fund, is a very different thing from taxing up an attorney's fee as part of the costs. There is no statute in New Mexico authorizing it. In the case of Price vs. Garland, 5 New Mexico, 98, the Supreme Court fully reviewed the law of costs, considering the statutes of New Mexico and the common law. The Court said in its opinion:

"The power to tax a sum expended by a successful party as costs, with which to reimburse him for expenditures made against the losing party, has its origin in statutes, and not in common law.

"At first, by the common law, no costs were awarded to either party *co nomine*. If the plaintiff failed to recover, he was amerced pro falso clamore; if he recovered judgment, the defendant was in misericordia for his unjust detention of the plaintiff's debt, and was not, therefore, punished with the *expensa litis* under that title. But, this being considered a great hardship, the statute of Gloucester (6 Edw. 1, c. 1) was passed, which gave costs in all cases when the plaintiff recovered damages. This was the origin of *cost de incremento*; for, when the damages were found by the jury, the judges held themselves obliged to tax the moderate fees of counsel and attorneys that attended the case. "Under the provisions of this statute every court of common law has an established system of costs, which are allowed to the successful party by way of amends for his expense and trouble in prosecuting his suit. It is true, no doubt, and is specially so in this country, that the legal taxed costs are far below the real expenses incurred by the litigant. Yet it is all the law allows as *expensa litis*." Justice Grier in Day vs. Woodworth, 13 How. 363. See also, Kneass vs.

Bank, 4 Wash. C. C. R. 238.

The courts have no power to award costs simply because they have power or jurisdiction over the subject matter of the suit, or the parties to it. Costs are purely the subject of legislative appointment. *Coggill vs. Lawrence*, 2 Blatchf. 304. Nor can courts go beyond the provisions of the statute to allow costs. *Dedekam vs. Vose*, 3 Blatchf. 153. A copy of the record is not a part of the taxable costs of a suit to be recovered by one party against another. *Caldwell vs. Jackson*, 7 Cranch, 277. Nor can the costs of printing a brief be taxed. *Jennings vs. The Perseverance*, 3 Dall. 336; *Ex-parte Hughes*, 144 U. S. 548. The cost of printing the record is now taxed, but this is so by reason of an act of congress. 96 U. S. 594."

Price vs. Garland, 5 New Mexico, 100.

This court has itself held, in the case of "The Baltimore" that attorneys' fees could not be taxed as costs in a case, unless authorized by statute. In discussing the various statutes regulating the taxation of costs in the courts of the United States, the court said:

"Weighed in the light of these several provisions in the Judiciary Act, the conclusion appears to be clear that Congress intended to allow costs to the prevailing party, as incident to the judgment, as most of the regulations referred to would be meaningless upon any other theory. Concede that to be so, still the inquiry arises, by what rules was the taxation to be regulated, and what were the rates of fees to be allowed; to which inquiries there can be but one answer, unless it be assumed that congress intended to leave the whole matter to the discretion of the Court trying the case, which cannot be admitted." In conclusion the Court says: "Attorneys, solicitors and proctors may charge their clients reasonably for their services, in addition to the taxable costs, but nothing can be taxed as cost against the opposite

party, as an incident to the judgment, for their services, except the costs and fees therein described and enumerated."

"The Baltimore," 8 Wall., 377.

It is true that this was an admiralty case, but the principle is applicable to chancery practice as well.

The Probate Court is the proper place for the complainant to get his allowance for expenditures as administrator. He is its officer, there he was appointed and there his accounts are to be settled. Because the District Court takes jurisdiction for an accounting and settlement of an estate, it does not thereby oust the Probate Court of its control over its officers, and its jurisdiction to settle and allow his commissions and disbursements. Besides, another suit was pending on appeal from the Probate Court upon the settlement of the accounts of the guardian. The bill alleges that this appeal had not been perfected when the bill was filed. The answer alleges that it had been perfected. If the allegations in the bill are true, the complainant had an ample remedy, by a simple motion in the District Court. He could then have proceeded to have the estate distributed. There was no necessity for this litigation except upon the contention of Guadalupe P. Harrison, deceased, and the defendant that they were entitled to a settlement of both estates, and to a settlement of the guardian's accounts. The suit for a settlement of the estate of Jose L. Perea, Sr., had already been brought and was pending when the minor Jose L. Perea, Segundo, died.

The rule of the court in relation to appeals from

the District Court at that time was as follows: "In causes originating in Probate Courts or Justices' Courts, and brought into the District Court by appeal or certiorari, if the appellant or plaintiff in error shall not procure the cause to be docketed on or before the third day of the term at which the return shall be made, the appellee or defendant in error may, on motion, have the cause docketed and the appeal or certiorari dismissed, or, at his election, he may have the judgment below affirmed, and judgment rendered for the same, with costs, against the appellant or plaintiff in error and his sureties."

Rule 14 of Sup. Ct. of N. M., for District Courts, p. 17 (1893).

XXII.

The Probate Court, not the District Court, is the Court in which complainant should secure allowance of commissions and disbursements, and there no such allowance should be made except upon evidence and settled principles of law:

As to the allowance of the costs of a guardian's accounting in the Court of New York, it is said:

"It is necessary, in order to sustain such an allowance that it should appear to be just and reasonable, and, until the evidence upon which the allowance is made is spread upon the record, we are unable to determine as to whether the Court had any legal proof upon which to act, or whether it acted entirely upon its own judgment. In cases of this description, the amount of the indemnity is not in the discretion of the court, but the judgment of the Court must be founded upon the legal proof, and where there is no legal proof of the value of the services for which this allowance is made it cannot be sustained."

In re Carman, 51 Hun's Rep. 639 (4 N. Y. Supplement 690).

In a case involving the settlement of a guardian's accounts, the Supreme Court of Illinois said:

"The general rule is that the cestui que trust has a right to demand a full investigation and explanation of the accounts, but the trustee is entitled to be reimbursed for all his costs and expenses in accounting. If both parties are materially in fault, the expenses should be borne equally. *Smith v. Kennard*, 38 Ala., 695; *Woodruff v. Snedecor*, 68, Ala., 437; *Sherman v. Angel*, 2 Hill, Eq. 26; *Moses v. Moses*, 50 Ga. 9; *Blake v. Pegram*, 109 Mass. 558. Where, however, the trustee has acted in good faith, and his accounts are contested, and it becomes necessary he should have the assistance of legal counsel, and where the various steps in the litigation over his accounts result in successive diminutions of the balance against him, he is entitled to his costs and expenses, even though some items of his accounts are not allowed. *Yoder's Appeal*, 45 Pa. St. 394; *McElhenny's Appeal*, 46 Pa. St. 348; *Smith's Appeal*, 47 Pa. St. 425; *Bendall's Distributees v. Bendall's Adm'r*, 24 Ala. 305; *Pinckard's Distributees v. Pinckard's Adm'rs*, Id 250; *Ashley v. Martin*, 50 Ala., 537."

Kingsbury vs. Powers, 131 Ill. 182 (22 N. E. Rep., 484).

7 Am. & Eng. Enc., 435.

Also see exhaustive note on subject of allowance of attorneys' fees to case of *Lucich v. Medin*, 93 Am. Dec. 396.

Where a litigation is equally the fault of both parties, one-half may be paid out of the estate and the other must be paid by the executor or administrator.

Smith v. Kennard, 38 Ala. 695.

An administrator will not be allowed an attorney's fee where the litigation is entirely his own fault. *Pearson v. Doninglear*, 32 Id. 227, and other cases cited in note to 93 Am. Dec., supra.

XXIII.

It seems to appellant unnecessary to consider each assignment of error separately. The principles we have been discussing apply to all of them, and we think that we have considered all the principles of law bearing on them. If appellant is right in this contention, the Court took jurisdiction and tried the case on a wrong theory as to the rights and relations of the parties from beginning to end; and also made its findings of fact upon a wrong theory. Many of these so-called findings of fact are finding of law, and this Court will so treat them. We respectfully submit that the decree should be reversed and the cause remanded, with proper instructions to the Court below.

WM. B. CHILDERS,

Solicitor for Plaintiff.

H.

Dr.

C.

IN THE
SUPREME COURT OF THE UNITED STATES.
October Term, A. D. 1897.

GEORGE W. HARRISON,
Appellant,
vs.
PEDRO PEREA, et al.,
Appellees.

BRIEF FOR APPELLEES.

Statement of the Case.

This was a suit in equity, brought in the District Court of Bernalillo County, New Mexico, by Pedro Perea as sole surviving administrator of the estate of Jose Leandro Perea, Second, and also as one of the heirs-at-law of the deceased who, at the time of his death, was an infant less than eight years of age. Jose Leandro Perea, referred to in this brief as the elder Perea, married, in 1842, one Maria Dolores Longina Chavez, by whom he had twelve children, all of whom survived him. She died, in 1877, and in 1878 he married Guadalupe Perea, by whom he had two children, Julian and Jose Leandro, Second. Julian died before the death of Jose Leandro, Second, and is not

mentioned in the findings of the Supreme Court of the Territory, nor is the matter of his death at all material to this controversy, because, as the law was at the time of his death, his mother inherited his entire estate. He is not mentioned in the pleadings except in the cross-bill, to which reference will be made, and is mentioned there only for the purpose of alleging that the administrators of the elder Perea did not deliver to his mother as his sole heir-at-law all that was coming to him from the estate of his father. Guadalupe Perea died on the 20th day of October, 1889. On the 6th day of January, 1890, the appellant was appointed her administrator. This bill of complaint was filed on the third day of April, 1890. The material facts, as alleged therein, are substantially as follows:

On the 23d of July, 1884, Guadalupe Perea became the guardian of the property of Jose Leandro Perea, Second, and took possession of his property, alleged to be worth thirty thousand dollars. Later, she married the appellant, George W. Harrison (the time of the marriage not being stated, but it is found by the Supreme Court to have been the 2d day of September, 1885). During the life of the child, under the influence and direction of appellant and acting through him, she made false reports to the Probate Court as to the condition of the estate of the child, and after his death she made what she designated a final report as guardian of the child. It is alleged that this report was false and that the same was not filed until March 6th, 1888, although the child died on the 27th day of August, 1887, and said Guadalupe and complainant had been appointed administrators of the estate of the child in September, 1887, and the complainant had qualified October 1st and the said Guadalupe on the 9th day of October of that year. This report was false in that it charged the said Guadalupe with less

than she ought properly to have been charged with, and claimed credits to which she was not entitled. On November 7th, 1887, a little more than two months after the death of the child, she filed, through the appellant, a report in the Probate Court showing that she had then in her possession assets of said estate amounting to \$25,190.20 together with 8,000 pounds of wool and \$71.42 in stock of the Bernalillo Bridge Company, while the report filed only four months later showed a balance of only \$17,670.61. During the life of his wife appellant came into possession of the assets of the estate of the deceased minor amounting to thirty thousand dollars. After her death he continued to hold them and refused to deliver them to complainant on the pretense that the accounts of his wife as guardian had not been settled, although several months intervened between the death of his wife and his appointment as her administratrix, during which time there was not even a pretense that he had any color of right to the possession of these assets. The bill set out with unnecessary particularity wherein the reports of said Guadalupe as guardian, made by the appellant, were false, and also charged specifically the wrongful acts of the appellant, and, without going further into tedious detail, it is sufficient to say that the bill sought to charge the appellant, as a trustee *ex maleficio* or as administratrix of his deceased wife, in whichever capacity it might turn out, upon the evidence that he held the fund, and to have a distribution of the fund to the persons entitled thereto. It also sought to charge the appellant individually with the costs of the proceeding including the solicitor's fees, and with the interest or accretions of the fund. The bill made Grover William Harrison, an infant son of the appellant and his deceased wife, a party, presumably because he, through the death of his mother, inherited three-fourths of her share of the estate.

Appellant demurred to this bill on the following grounds:

First. Because complainant has sued in two capacities, individually, and as surviving administrator of Jose L. Perea. Second, and the bringing of the suit in such double capacity, constitutes a misjoinder of parties complainant.

Second. Because said bill seeks to surcharge and falsify the accounts, statements and reports filed by Guadalupe Perea de Harrison, deceased, of whose estate, defendant, George W. Harrison, is administrator, as guardian of Jose L. Perea, Second, to-wit, the account, statement and reports alleged to have been filed by her respectively on the 6th day of July, A. D. 1886, and on the 7th day of November, A. D. 1887, and on the 6th day of March, A. D. 1888, and does not definitely and with sufficient certainty allege wherein and in what particulars said guardian failed in said reports, statement and accounts to properly charge herself with items, and wrongfully took credit for items, to which credit shows she was not entitled.

Third. Because said defendant, George W. Harrison, is made a party defendant to said bill in his individual capacity, when said bill contains no allegations, which, if true, would make him liable in such capacity.

Fourth. Because the District Court as a court of equity has no original jurisdiction to entertain a bill for the settlement of guardian's accounts.

Fifth. Because the District Court as a court of equity has no original jurisdiction to entertain a bill for the settlement of administrator's accounts.

Sixth. Because complainant has a full, complete and adequate remedy in the Probate Court.

Seventh. Because complainant has a full, complete and adequate remedy in a court of law.

Eighth. Because complainant is not entitled to the relief prayed for, and to his attorney and counsel fees.

Ninth. Because said bill prays both for the settlement of the guardianship of Guadalupe Perea de Harrison, and also of the estate of the deceased ward,

Jose L. Perea, Second, and is therefore multifarious.

Tenth. Because said complainant as the co-administrator of defendant's intestate seeks by said bill to administer the estate of Jose L. Perea, Second, alone, and to the exclusion of defendant, who is entitled to participate in such administration as the administrator of complainant's co-administrator.

Transcript of Record, Folios 30-31.

This demurrer was withdrawn and an answer was filed wherein the defendant in effect admitted all that the bill charged as to the receipt by him of the assets, but alleges that his refusal was not for the reasons alleged in the bill "but that there might be a full and just accounting as to the said estate and for no other reason." The answer, however, strenuously claimed that until there was a settlement of the accounts of the guardianship, the complainant had no right to the possession of the assets, but appellant was lawfully entitled to hold the same until such settlement. Special attention is called to the following extracts from the answer:

"That he admits that heretofore, to-wit, on the 27th day of August, 1897, Jose L. Perea, Second, a minor, about the age of eight years, died at said County of Bernalillo, leaving the said Guadalupe Perea de Harrison, his mother, then living, his heir-at-law, but the said defendant does not admit that the said complainant and the other defendants mentioned in said bill, to-wit, Jose L. Perea, Jesus M. Perea, Benicio F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo, Soledad Perea de Castillo, Filomena Perea de Otero, Barbara Perea de Yrisarri, Cesaria Perea de Hubbell and Grover William Harrison were and are the heirs-at-law of the said deceased: but said defendant alleges that it is a question of law, whether or not said persons are such heirs at law, and he neither admits nor denies the fact, but leaves the decision of the same to the court."

Transcript, Folio 34.

"Further answering, the said defendant admits that the effects of the Jose L. Perea, Second, which went into the hands of his guardian, *was* personal property, money, promissory notes, bank stock, as alleged in complainant's bill, but defendant denies that the same were in value or amount the sum of thirty thousand dollars."

Transcript, Folio 35.

"Further answering, this defendant denies that it was through his influence that said Guadalupe Perea de Harrison pretended and claimed that after the death of her said ward and the qualification of said complainant and said guardian as administratrix of his estate, she still held the property and effects of said deceased minor in her late capacity of guardian, *and the defendant alleges that the said Guadalupe Perea de Harrison was advised by counsel that after the death of her said ward her guardianship would not be terminated until she made a final report as such guardian and until the said report had been approved, and that it was necessary that such final report should be made and approved, and she by order of court finally discharged as such guardian. And defendant further states that he is so advised by counsel himself, and alleges that such is the fact and that the law so requires.*"

Transcript, Folio 37.

"Further answering, defendant admits that the said Guadalupe Perea de Harrison continued, prior to the 6th day of March, A. D. 1888, to insist that she still held the property and effects of the said minor, which were in her hands as guardian, and refused to permit the said complainant to intermeddle therewith, until she could make a final report as guardian and procure a final discharge as such, all of which this defendant alleges she did under advice of counsel and as she had a right to do."

Transcript, Folio 38.

“And further answering, this defendant denies that the complainant is entitled to the possession of said estate until the said guardianship accounts have been fully settled.”

Transcript, Folio 41.

“Defendant alleges that he did not refuse to turn over said guardianship estate to said complainant for the reasons alleged in said bill, but that there might be a full and just accounting as to the said estate, and for no other reason.

“Further answering, defendant admits that Guadalupe Perea de Harrison died intestate, in October, 1889, and that this defendant was appointed, qualified, and is now the administrator of her estate; and that he holds possession of said guardianship estate lawfully as such administrator of the estate of his deceased wife, because her guardianship has never been settled, although, she in good faith endeavored to procure a settlement thereof, as hereinbefore alleged. Said defendant denies that prior to his becoming such administrator that he unlawfully took possession of said guardianship estate.

“Further answering, this defendant alleges that he is entitled to have a legal settlement of said guardianship estate, either by said appeal or by the Probate Court, or this honorable court, prior to turning over said estate to the complainant, or anybody else; that what the complainant is entitled to is an accounting as to said guardianship, and which accounting this defendant stands ready, willing and anxious to have, as the administrator of the said Guadalupe Perea de Harrison.”

Transcript, Folio 42.

“And this defendant further alleges that he and the said defendant, Grover William Harrison, the minor son of himself and the said Guadalupe Perea de

Harrison, have succeeded to all the interests and rights of the said Guadalupe Perea de Harrison in and to the assets of the said estate.

“Wherefore, by reason of the premises, this defendant alleges that said complainant will not be entitled to a decree for anything upon said accounting, but defendant alleges that he is ready and willing to pay any sum for which he or the estate of the said Guadalupe Perea de Harrison may be found liable on said accounting.”

Transcript, Folio 45.

In addition to the parts of the answer quoted, the appellant set up in his answer the matters set forth in his first assignment of error, all of which latter allegations were expunged on exceptions. In view of the fact that these allegations are set forth in appellant's first assignment of error in convenient form for consideration by the court, it would not be proper to enlarge this statement by repeating them here; but it is submitted that they are wholly immaterial to this controversy, and constitute no defense to the relief prayed for by this bill.

Appellant also filed a cross-bill in which he sought to charge the appellee as one of the administrators of his deceased father with misfeasance, malfeasance and nonfeasance, and to surcharge and falsify the accounts of the said administrators, to have them removed, to set aside a final settlement of their accounts approved by the Probate Court in 1886, and then to have an accounting of the estate of the elder Perea which should begin at his first marriage in 1842, in order to ascertain what portion of the assets of which he died possessed was acquest or community property of the second marriage. It may be well to state that the elder Perea left a will whereby he disposed of all the property in his possession at the time of his death, whether

such property was acquired during the existence of the marriage between him and the said Guadalupe or not and whether the said property was his separate property or not; and the said appellant by his cross-bill seeks to sustain the said bill and to claim all which by the will was devised to the said Guadalupe, and also to attack the will as ineffectual to dispose of her share of the community property. The cross-bill affirmatively shows that there was another action pending in the same court for the same cause, and if resort may be had to the prayer of the cross-bill, that shows that it was multifarious and was not germane to the matters alleged in the original bill. The cross-bill was demurred to and the demurrer sustained.

The case was heard by a master whose findings are not now material. The trial court rendered a decree against appellant, and the case was taken on appeal to the Supreme Court of the Territory. That court affirmed the decree of the court below with modifications, and the case is now here upon a transcript and assignment of errors, evidently made up on the theory that the case is here for review in the same manner and to the same extent as it was before the Supreme Court of the Territory.

Counsel for appellant discusses the case in his brief as if it were here for review upon the facts as well as upon the law. But this brief will be confined to the discussion of such matters as may properly be considered by this court upon this appeal.

Appellee asks this court to award damages against the appellant as for a vexatious appeal, and in support of this claim he begs to call the attention of the court to the fact, as shown by the record, that appellant in his pleadings in the trial court relied strenuously, and indeed entirely, after the exceptions to his answer were sustained, upon the proposition that he could not be compelled to surrender the assets of this child to

his surviving administrator until the guardianship accounts of his deceased wife were settled, and this claim he continued to assert for years after the death of his wife, but now abandons. In the brief filed on his behalf in this court, it is said:

“The complainant contended in the court below, and the master found, that upon the appointment of Guadalupe Perea de Harrison as administratrix of her deceased son, she ceased, by operation of law, to hold such assets belonging to his estate as were then in her hands as guardian, and thereafter held them as administratrix. Appellant is disposed to concede this proposition.”

Of the assignments of error relied on, at least eighteen attempt to present matters not open to review in this court; and of the remaining eight, at least four are clearly frivolous, and the other four do not present questions upon which appellant was justified in asking a review by this court, as no probable cause for reversal is shown to exist.

The Supreme Court of New Mexico found that the appellant's conduct with reference to this fund was in the highest degree inequitable, and the whole record shows that the appeal was taken for delay merely. Under these circumstances, it is submitted that damages should be awarded.

I.

The exceptions to the answer of Appellant were properly sustained.

There is nothing in the transcript on file which shows what part or parts of the answer of the appellant were excepted to in the trial court, but appellant attempts by his assignments of error to correct this defect in his transcript, alleging in the first assignment that which the transcript fails to show, i. e., the par-

ticular allegations of the answer which were stricken out on exceptions. It is not intended to dispute the correctness of the statement of counsel, in his assignment of error, as to the portions of the answer which were in fact expunged on the exceptions sustained by the trial court.

It is impossible, however, to concede the proposition laid down in the brief of counsel, that, if it does not plainly appear what was stricken out on these exceptions, the court committed error in sustaining them. It did, of course, plainly appear to the trial court what part of the answer was excepted to, and it must have also plainly appeared to the Supreme Court of New Mexico, or it could not have pointed out in its opinion, as claimed by appellant's counsel, the parts of the answer so stricken out; but does it plainly appear to this court? The opinion of the court below is no part of the record here, so this court must look to the first assignment of error in order to determine what part of the answer was stricken out on these exceptions. If this court is willing to review the action of the lower courts in this regard, the appellee has no objection to offer, but he does insist that the action of those courts must be presumed to be correct, and should not be overturned unless error is made to appear affirmatively. If this action of the courts below can be considered, it is clear that theirs was no error in sustaining these exceptions to the defendant's answer for the following reasons:

- (a) The suit was brought to ascertain what amount of money, belonging to the estate of the deceased child, had come to the hands of Guadalupe Perea de Harrison and her husband, the appellant, and to obtain distribution of that money. That there might be further moneys due the estate of the infant from the estate of his deceased father was no obstacle to the distribution

of the moneys actually ready for distribution.

- (b) The appellant had no right to withhold moneys, to the custody of which appellee, as surviving administrator of the decedent, was entitled, on the pretense that appellee as administrator of another estate had failed to do his duty.
- (c) It appeared by the allegations of the answer and by the allegations of the cross-bill that there was another action pending in the same court, in which all parties necessary to a determination of the entire controversy were before the court; in which the appellant, Harrison, was seeking to surcharge and falsify the accounts of the administrators of the estate of Jose Leandro Perea, the elder, and in which all of the matters sought to be set up by way of defense to this suit were made the foundation of a demand for affirmative relief against the administrators of the said Jose Leandro Perea, of whom appellee was one.
- (d) The portions of the answer stricken out on exceptions by the trial court, do not, when read as a whole, nor do any of the allegations contained therein, state any fact material to a determination of the matters alleged in the bill of complaint in this cause, nor does the decree in this case conclude the appellant as to any of those matters. He is still free to proceed, in the suit brought against the administrators of Jose Leandro Perea, the elder, to demonstrate, if he can, that that estate has not been fully and fairly settled and to compel a full accounting by those administrators notwithstanding this decree.
- (e) It affirmatively appears by the allegations of the answer and of the cross-bill that the estate of the elder Perea had been settled, and the settlement thereof had been approved by the probate court on the 11th day of December, 1886, and appellant by this answer and cross-bill sought to impeach that settlement.

Unless the matters set up in an answer are responsive to the allegations of the bill, or tend to show that the complainant is not entitled to some

part of the relief sought by the bill, such matters are impertinent, and are properly expunged on exceptions. The rule on this subject is well stated by the supreme court of Maine, as follows:

It has often been declared by the courts that the best rule to ascertain whether the matter excepted to be impertinent is to see whether the subject of allegation could be put in issue or be given in evidence between the parties. An application of this test here clearly shows that the ruling of the presiding judge must be sustained.

The bill seeks to obtain from the respondents an account and settlement of the earnings of a vessel, owned by the parties to the bill as tenants in common. Two of the respondents in their answers virtually admit the principal facts alleged in the bill, but set up the statute of limitations as a defense thereto. This, of course, is proper enough. But they then go further, and, by way of excuse or justification for setting up such a plea, assert that the complainant is indebted to them, respectively, in certain other accounts which have no connection whatever with the transactions set forth in the bill. This was unnecessary and improper. It introduces matters which cannot be put at issue, and about which evidence cannot be received. It would only excite prejudice or feeling, and tend to unnecessary discussion and delay. The rule which disallows impertinent allegations is a sound and just one, and whenever required should be enforced.

Spaulding vs. Farwell, 62 Me., 320.

In the case of *Wood vs. Mann*, Mr. Justice Story, delivering the opinion of the court, said :

The remaining question is, whether the exception can be properly taken in this form upon a reference to the master, and a report for impertinence. It does not strike me that this point is of any serious importance; for if the court should be satisfied that the matter was not proper for an answer, and involved inquiries not in that stage of the case open to litigation,

I have no doubt that it would be the duty of the court, as a matter of self-protection, to suppress it. It is a great mistake to suppose that, if the parties do not object to a matter, the court is bound to entertain cognizance of it and to decide it. But is this matter of impertinence or not? It is argued that it is not, because it does not answer the description given by Gilbert in his *Forum Romanum* (page 209), where he says that "impertinences are where the records of the court are stuffed with long recitals, or with long digressions of matters of fact which are altogether unnecessary and totally immaterial to the point in question," and he then proceeds to illustrate it by instances. Doubtless such matters as he states are impertinences. But they are not the only matters of this sort, even if the generality of the expression in the latter part of the sentence, as to immaterial facts, would not (as I am not prepared to admit) cover the present case. Impertinences are, as I conceive, any matters not pertinent or relevant to the points which, in the particular stage of the proceedings in which the cause then is, can properly come before the court for decision. If the cause is at issue upon a general answer purporting to be to the merits, any matter not going to the merits is properly to be deemed an impertinence."

Wood vs. Mann, 1 Sumner, 578.

It is said by counsel for appellant, in his brief :

The exceptions filed to the answer for impertinence, necessarily admit the truth of the allegations to which they are filed.

While it is true that the allegations of the answer are to be taken as true, in determining the exceptions, the rule is confined to such allegations as are well pleaded, and does not extend to allegations of mere legal conclusions such as the following:

And that the said complainant, Pedro Perea, is liable and responsible to the estate of said minor, Jose L. Perea, Second, for any and all of the interest of the said minor in the estate of the said Jose Leandro

Perea, Sr., which said complainant and his co-administrators have failed to account for.

The learned counsel for appellant argues these exceptions, in his brief, as if the portions of the answer stricken out contained only allegations of material facts, although an inspection of the record will show that much of the matter stricken out was made up of merely erroneous legal conclusions, unsupported by allegations of fact and the answer read as a whole, will demonstrate that the parts which were excepted to, contained no allegation of a material fact "or matter which could have any influence in the decision of the suit, either as to the subject-matter of the controversy, the particular relief to be given, or as to the costs."

Story Eq. Pl., Sec. 863.

1 Beach Mod. Eq. Pr., Sections 408-412.

Hood vs. Inman, 4 John. Ch. 437.

Powell vs. Kane, 5 Paige Ch. 267.

Spaulding vs. Farwell, 62 Me. 320.

Wood v. Mann, 1 Sumn. 578.

Woods v. Morrell, 1 John. Ch. 105.

Florida Mortgage Co. v. Finlayson, 74 Fed.

Rep. 674.

II.

The Demurrer to the Cross-Bill Was Properly Sustained.

The cross-bill was filed by appellant in his individual capacity and as administrator of the estate of Guadalupe Perea de Harrison, deceased. By it he sought to impeach the settlement of the estate of the elder Perea which had been approved by the probate court in December, 1886, almost eight months before

the death of the child whose estate ought to have been ready for distribution within a very short period after his death. He also seems to call in question the distribution of the estate of Maria Dolores Longina Chaves, the first wife of the elder Perea, who died in 1877, and he claims that the administrators of the estate of the elder Perea had administered upon and distributed property which properly belonged to Guadalupe Perea de Harrison as her share of the community property of the marriage community of herself and the elder Perea. He alleged that there was already pending, in the same court, another action, with all necessary parties before the court, in which the same matters alleged in the cross-bill were set up; indeed, the cross-bill is declared in terms, to be a repetition of the original bill in the other case. He sought to bring into this litigation the administrators of the estate of the elder Perea, who are not, in their representative capacity, parties to the original bill, and to have them removed as such administrators, a receiver of that estate appointed in their stead, and to have a decree declaring void the final settlement of those administrators as approved by the probate court. After this he desired a new accounting which should begin at the time of the first marriage of the elder Perea in 1842.

The cross-bill was demurred to upon the following grounds:

First: That the matters and things in said cross-bill alleged and set forth, and in and about which relief is prayed in and by said cross-bill, are in no wise connected with the matters and things in the original bill in said cause and the relief prayed for therein.

Second: That the relief prayed for in and by said original bill is of matters relating solely and entirely to the estate of Jose L. Perea, Second, deceased,

and that prayed for by said cross-bill is of matters relating to another and distinct estate, with which the said Pedro Perea, as administrator of the estate of Jose L. Perea, Second, deceased, has no interest or concern.

Third: That it appears in and by said cross-bill that it is sought thereby to consolidate two separate distinct suits now pending in this honorable court, which are in no way or manner connected with each other, and in which the parties are not the same.

Fourth: That relief is sought in and by said cross-bill against Pedro Perea and Mariano Perea, as administrators of one Jose L. Perea, deceased, who, as such administrators, are neither parties complainant nor defendant in said original bill.

Fifth: That the said cross-bill relates to matters between parties other than complainant as administrator of the estate of Jose L. Perea, Second, deceased, and said complainant should not be embarrassed thereby, or this record encumbered by this cross-bill.

Sixth: That said cross-bill is multifarious.

Seventh: That said cross-bill is without equity.

Eighth: That said cross-bill is in many other respects informal, insufficient and defective.

This demurrer was properly sustained by the court: the matters alleged in the cross-bill are not germane to the original bill; the cross-bill is multifarious; it attempts to bring in new parties, and its only effect, and it is not unfair to say that its only purpose, was to embarrass and delay the adjudication and settlement of the estate of this infant which was then ready for distribution. It was not at all necessary to bring into this litigation the matters alleged in the cross-bill, nor is any party in interest precluded by the decree in this cause, from having the relief sought in the other suit if the facts would warrant it. Numerous decisions of this and other courts, state and federal, support the ruling of the court below on this demurrer.

The office of a cross-bill is either to warrant the grant of affirmative relief to the defendant in the original suit, to obtain a discovery in aid of the defense in that suit, to enable the defendant to interpose a more complete defense than that which he could present by answer, or to obtain full relief to all parties, and complete determination of all controversies which arise out of the matters charged in the original bill. The fact that the cross-bill fairly tends to accomplish either of these purposes, is generally a sufficient ground for its interposition. It must seek equitable relief, but, subject to this qualification, a complainant who has brought a defendant into a court of equity in order to subject him to an adjudication of his rights in a certain subject-matter, cannot be heard to say that there is no equity in a cross-bill which seeks an adjudication of all the rights of the parties to the original bill in the same subject-matter. The issues raised by the cross-bill must be so closely connected with the cause of action in the original bill that the cross-suit is a mere auxiliary or dependency upon the original suit, but, subject to this qualification, new facts and new issues may properly be presented by a cross-bill.

Per Sanborn, J. in *Springfield Milling Company v. Barnard & Leas Mfg. Co.*, 81 Fed. Rep. 63.

A cross-bill is brought either to aid in the defense of the original suit or to obtain a complete determination of the controversies between the original complainant and the cross-complainant over the subject-matter of the original bill. If its purpose is different from this, it is not a cross-bill, although it may have a connection with the general subject of the original bill. It may not interpose new controversies between co-defendants to the original bill, the decision of which is unnecessary to a complete determination of the controversies between the complainant and the defendants over the subject-matter of the original bill.

Per Sanborn, J. in *Stuart v. Hayden*, 72 Fed., 410.

Story Eq. Pl., Sec. 389, 398, 399.

1 Beach Modern Eq. Pr., Sections 433, 435.

Fidelity Trust & S. V. Co. v. Mobile St. Ry.,
53 Fed. 850.

McMullen v. Ritchie, 57 Fed. 104.

Richman v. Donnel, 53 N. J. Eq. 32.

Carnochan v. Christie, 11 Wheat. 446.

Meissner v. Buck, 28 Fed. 161, 163.

Ry Co. v. Bank, 134 U. S. 276.

Davis v. Christian Union, 100 Ill., 313.

French v. Griffin, 18 N. J. Eq. 279.

Gregory v. Pike, 67 Fed. 845.

Graham v. Berryman, 19 N. J. Eq. 29.

Wickliffe v. Clay, 1 Dana, 585, 589.

Allen v. Roll, 25 N. J. Eq. 164.

King v. Insurance Co., 45 Ind. 43.

Ayers v. Carver, 17 How. 594.

Shields v. Barrow, 17 How. 145.

The "Dove," 91 U. S. 385.

Cross v. De Valle, 1 Wall. 5.

Johnson Co. v. Union Co., 43 Fed. 331.

Rubber Co. v. Goodyear, 9 Wall. 807.

Stonemetz Co. v. Brown Co., 46 Fed. 851.

Young v. Colt, 2 Blatch. 373.

Cunningham v. Erwin, Hopk. Ch. 66.

Kruger v. Ferry, 41 N. J. Eq. 432.

Draper v. Gordon, 4 Sanf. Ch. 210.

III.

If the appellant's theory of the case had any foundation, he should have moved the court to consolidate the two causes—the one seeking the settlement of the estate of the elder Perea and the case at bar.

This record discloses the fact that at the time the appellant filed his answer and cross-bill there was pending in the same court another suit to which the administrators and all of the heirs-at-law of the elder Perea were parties, and in which he sought, as complainant, to reopen the settlement of that estate as made by the probate court in December, 1886. If there was any necessary connection between these two suits, the appellant might, by a motion to consolidate, have placed the trial court in position to exercise its discretion upon the motion and to impose terms upon the appellant as a condition to the granting of his application. Such conditions certainly would have involved the payment into court and distribution by interlocutory decree of at least twenty-five thousand dollars of money in the hands of appellant, as to which there was no ground for controversy. Upon an application to consolidate, the court, in its discretion, could have prescribed such terms, and if the application appeared to be made in good faith, to obtain a fair settlement of both estates, would undoubtedly have done so. If, on the other hand, it appeared to the court that the appellant was merely endeavoring to obstruct the progress of this case, was struggling for mere delay, and was seeking inequitably to prevent the distribution of the estate of this child, it would certainly have refused to lend its aid to the accomplishment of such a purpose and would have denied the application. The action of the court upon such an

application would not be subject to review upon appeal, as it is purely a matter of discretion, and consolidation of causes is only allowed to prevent unnecessary costs or delay.

This court has said in cases at law (*Insurance Co. vs. Hillman*, 145 U. S. 293): "The learning and research of counsel have produced no instance in this country in which such an order, made in the exercise of the discretionary power of the court, unrestricted by statute, has been set aside on bill of exceptions or writ of error."

The power of a court of equity to consolidate causes is certainly equal to that of a court of law, and it has been said that "equity will interfere to restrain the prosecution of separate actions and to have the rights of the parties determined in a single suit, when convenience and the ends of justice will be subserved by an investigation and determination of the whole controversy in a single suit."

The effect of the filing of the cross-bill, and injecting into the answer the matters excepted to, if the exceptions and demurrer had been overruled, would have been to work a virtual consolidation of these two causes, for it can hardly be contended that the appellant could have gone on with his original suit and at the same time have prosecuted his cross-bill in this suit: yet it is contended that the court could exercise no discretion in passing upon the demurrer and exceptions. If this proposition is sound, a chancellor may be compelled to consolidate causes, by indirection, where he might refuse a direct application. That the court properly exercised its discretion in preventing the appellant from obstructing the progress of this suit is demonstrated by the result. The supreme court of New Mexico found:

That immediately after the intermarriage of the defendant, George W. Harrison, and the said

Guadalupe Perea, the said George W. Harrison took charge and control of the affairs of the said Guadalupe Perea, including the assets of the said minor, Jose L. Perea; that he reduced the assets and property of said minor to money and mingled the same with his own funds and deposited the same in bank to his individual credit, and at the time of final decree in the case in the district court he retained, subject to his individual control, all of the moneys belonging to the estate of Jose Leandro Perea, Segundo.

This finding, fairly construed, shows that the estate of the deceased child had been reduced to money and placed in bank, subject to the individual control of the appellant, at the time of the death of the child on the 25th day of August, 1887, and it was just eight years and one day thereafter that the decree of distribution was entered in that court. It is now more than ten years since the death of the child, and the money is still in possession of appellant.

One shudders to think what length of time would be required for the unraveling of the estate of the Elder Perea, with a million dollars of assets, and two marriage partnerships to be investigated, and the community property in each to be ascertained and segregated, if more than ten years are required to compel this appellant to let go his hold of the estate of this child, ready for distribution as it was at the time of the child's death. Appellant's cross-bill alleges that there was another action pending in the same court for this same cause, and this was properly considered on the demurrer. It is also true that appellant might, even after the exceptions and demurrer were sustained, have made the motion to consolidate the two causes. Not having done so, this court will certainly not reverse this case, unless it very clearly appears that the appellant has been prejudiced by the action of the trial court.

- Story Eq. Pl., secs. 736-7.*
1 Beach Mod. Eq Pr., secs. 581-5.
Evans vs. Evans, 23 N. J. Eq. 180.
Davis vs. R. R. Co., 25 Fed. 786.
Deering vs. Winona Works, 24 Fed. 90.
Mercantile Trust Co. vs. Ry. Co., 41 Fed. 8.
Biron vs. Edwards, 77 Wis. 477.
Anderson vs. Spear, 4 Dill. 1.
American Co. vs. Hague, 4 Edw. Ch. 117.
Drye vs. Grundy, 35 S. W. 119.
Lunt vs. Kinne, 75 Fed. 636.
Russel vs. Chicago Trust Bank, 139 Ill. 538.
Crane vs. Larsen, 15 Oreg. 345.

IV.

The assignments of error, numbers four to seventeen, both inclusive, and numbers nineteen, twenty and twenty-two, attempt to present matters that are not open to review by this court.

The transcript is made up in utter disregard of the requirements of the statute under which this case is brought here for review. It contains the evidence taken before the master, the master's report and exceptions thereto, and, indeed, everything which was before the supreme court of the Territory when the case was there reviewed. These assignments of error are evidently based upon the idea that the case is to be reviewed by this court, to the same extent and in the same manner as was done by the territorial supreme court. The findings of fact, certified by the supreme court of the territory, are made

part of this transcript as required by the act of congress, but there are no rulings upon evidence certified up in the manner prescribed by the same act. In the brief of counsel frequent references are made to the evidence, the report of the master and to other matters not before this court and in the brief as well as in several assignments of error, complaint is made that certain findings of fact certified by the supreme court of New Mexico are wholly unsupported by any evidence.

Repeated decisions of this court have settled the practice in such cases as this and under those decisions this transcript should have been made up of the pleadings, the findings of fact and the decree, to which should have been added under section two of rule eight, a copy of the opinion of the court below. Upon such a transcript there would be open for review by this court only the action of the court below in sustaining exceptions to the answer and in sustaining the demurrer to the cross-bill, and the question as to whether the facts found, the findings of fact being conclusive in this court, support the decree.

Grayson v. Lynch, 163 U. S. 473.

Gildersleeve v. N. M. Min. Co., 161 U. S. 573.

Idaho Land Co. v. Bradbury, 132 U. S. 513.

San Pedro Co. v. U. S., 146 U. S. 130.

Mining Co. v. Machine Co., 151 U. S. 450.

Hecht v. Boughton, 105 U. S. 236.

Stringfellow v. Cain, 99 U. S. 610.

Gray v. Howe, 108 U. S. 12.

Zeckendorf v. Johnson, 123 U. S. 617.

Haws v. Victoria Mining Co., 160 U. S. 303.

V.

The decree was properly rendered against the appellant, George W. Harrison, in his individual capacity.

The eighteenth assignment of error is as follows:

The court erred in rendering a decree in this cause against the defendant in his individual capacity, when upon the facts, if he is liable at all, he is liable as administrator of the estate of Guadalupe P. Harrison, deceased.

The supreme court of New Mexico found the following facts, upon which findings the decree against appellant in his individual capacity, is based:

IV.

That the defendant, George W. Harrison, married the said Guadalupe Perea, widow as aforesaid, on the second day of September, 1885.

V.

That immediately after the intermarriage of the defendant, George W. Harrison, and the said Guadalupe Perea the said George W. Harrison took charge and control of the affairs of said Guadalupe Perea, including the assets of said minor, Jose L. Perea; that he reduced the assets and property of said minor to money and mingled the same with his own funds and deposited the same in bank to his individual credit, and at the time of final decree in the case in the district court he retained, subject to his individual control, all of the moneys belonging to the estate of Jose Leandro Perea, Segundo.

VIII.

That after the death of the said Jose Leandro Perea, Segundo, until the filing of the bill of com-

plaint in this cause, Guadalupe Perea de Harrison during her lifetime and George W. Harrison after her death claimed to hold the assets of the estate of the said Jose L. Perea, Segundo, not as administrator, upon the pretense that there could be no distribution of such assets until the final account of Guadalupe Perea de Harrison as guardian was settled by the probate court.

IX.

That George W. Harrison (having charge of all the estate of the said ward) in the name of his wife, Guadalupe Perea de Harrison, made sundry reports to the said probate court as to the condition of the estate, some containing false entries to her advantage, and together obstructing distribution among the heirs.

X.

That on the 20th day of October, 1889, Guadalupe Perea de Harrison died, and on the sixth day of January, 1890, George W. Harrison was duly appointed administrator of the said Guadalupe Perea de Harrison, and during all the period between the death of said Guadalupe Perea de Harrison and his appointment as such administrator he was in possession of the assets of the said Jose Leandro Perea, Segundo, deceased, with full power (knowledge) of their trust character, and wrongfully refused to pay over the same to Pedro Perea, who was the sole surviving administrator of Jose Leandro Perea, Segundo, and entitled to the custody thereof.

XII.

That the defendant, George W. Harrison, had in his possession and was liable to the complainant on the day of the rendition of the final decree herein by this court, the sum of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents, which was the total amount of moneys for which he is liable,

as hereinbefore set out, with interest thereon at six per cent. per annum, after allowing all credits to which he or the said Guadalupe Perea de Harrison are entitled.

XV.

That the said Guadalupe Perea de Harrison in her lifetime failed to keep correct accounts of the assets of Jose Leandro Perea Segundo, which came into her possession, and that said George W. Harrison also failed to keep correct accounts of his dealings with the said assets.

XVI.

That George W. Harrison wilfully obstructed the distribution of the assets of the estate of Jose Leandro Perea, Segundo, and by his misconduct rendered it necessary that the complainant should obtain possession of the said assets by the institution of this suit, and that the necessity for this suit arose entirely out of the wrongful conduct of the said George W. Harrison.

If it is difficult to understand upon what theory it can be contended that this decree was not properly rendered against Harrison individually, if, as already shown, this court is bound by these findings of fact. The fifth and tenth findings are alone sufficient to support the decree against him.

In the opinion of the supreme court of the Territory it is said:

Complaint is made that the decree in this case was against the defendant personally, and not as administrator. The evidence establishes that for the period of time which elapsed between the death of his wife and defendant's qualification as administrator—nearly three months—defendant was in possession of the assets of the estate, with full knowledge of its trust character, and without the shadow of right to hold them, claiming them for reasons plainly insufficient in

law, and tauntingly asserting his intention to retain them. It is also to be noted that the record does not show that, as administrator of his deceased wife, he ever charged himself with one dollar of these assets, or that they entered into the inventory of her estate, or that they were ever treated by him as a portion of his said wife's estate. It is also shown by his own testimony that he continues in possession of such assets, and that they are deposited in the bank to his credit. Having appropriated them individually, he is estopped to deny his individual liability. We therefore hold that the facts are complete to establish a case for a decree against him as an individual.

Attention is also called to the following allegations in the answer:

And this defendant further alleges that he and the said defendant, Grover William Harrison, the minor son of himself and the said Guadalupe Perea de Harrison, have succeeded to all the interests and rights of the said Guadalupe Perea de Harrison in and to the assets of the said estate.

Wherefore, by reason of the premises, this defendant alleges that said complainant will not be entitled to a decree for anything upon said accounting; but defendant alleges that he is ready and willing to pay any sum for which he or the estate of the said Guadalupe Perea de Harrison may be found liable on said accounting.

Transcript, Folio 45.

1 Perry on Trusts, Sec. 217.

2 Perry on Trusts, Sec. 828.

Mechanics' Bank v. Saton, 1 Peters 309.

Wormley v. Wormley, 8 Wheat. 419.

Oliver v. Platt, 4 How. 333.

McAll v. Harrison, 1 Brock. 126.

U. P. R. R. Co. v. McAlpine, 129 U. S. 305.

Moore v. Crawford, 130 U. S. 122.

Allen v. St. Louis Nat. Bank, 120 U. S. 40.

Easterly v. Barber, 65 N. Y. 259.

Bennet v. Austin, 81 N. Y. 322.

Proprietors, etc., v. Post, 31 Conn. 259.

Hennesy v. Bray, 33 Beav. 96.

Rackhams v. Siddall, 16 Sim. 297.

Wheeler v. Billings, 72 Fed. 315.

Pennington v. Smith, 69 Fed. 189.

Chicago R'y. Co. v. Pullman Co., 50 Fed. 24.

Colt v. Lasnier, 9 Cowen 320.

VI.

It was not at all necessary that the particular dollars which came into Harrison's hands be identified in order to charge him individually.

The twenty-first assignment of error is as follows:

21. The court erred in finding and decreeing that defendant was liable as a trustee for funds in his hands, when neither the evidence nor the court's findings identify or show any particular assets in his hands to have been assets of said minor's estate, and the bill itself was not brought for the purpose of impressing a trust on any particular property on assets or against the defendant as a constructive trustee and contains no allegations upon which such relief can be predicated. The only relief the bill warrants is an accounting against the estate of Guadalupe Perea de Harrison.

This assignment of error seems to me to be based upon a misapprehension of the effect of the decree.

The allegations of the bill and the findings of the court are amply sufficient to charge appellant as a trustee *ex-maleficio*, and the decree so charges him. If other creditors of appellant were struggling with this appellee for preference in the application of a particular fund, appellee would be required to identify the fund in question with reasonable certainty in order to establish his right to a preference, but even in such a case, if the finding was that a certain amount of money to which appellee was entitled, went into a particular depository and was commingled with other funds of appellant, where it still remained, part of a larger sum, a court of equity would disentangle the account and give appellee the portion to which he was entitled, notwithstanding his inability to identify particular dollars; but in such a case as this the necessity for identification does not arise.

Socher's Appeal, 104 Pa. St. 609.

National Bank v. Insurance Co., 104, U. S. 68.

United States v. State Bank, 96 U. S. 36.

Bayne v. United States, 93 U. S. 642.

Phila. Nat. Bank v. Dowd, 38 Fed. 172.

Trull v. Trull, 95 Mass. (13 Allen) 407.

Houghton v. Davenport, 74 Me. 596.

VII.

It is immaterial that the supreme court of New Mexico may have included legal conclusions in its findings of facts.

There appear to be two assignments of error numbered 14, as follows:

14. The said court erred in finding by its VII finding of fact that said assets were not held

by the defendant's intestate, Guadalupe Perea de Harrison, as the administratrix of the said deceased minor, when as a matter of law she held them after said guardian's death and letters of administration had been granted her, not as guardian, but as administratrix. Folio 372, page 229.

14. The court erred in holding by its tenth finding that the refusal of the defendant to pay over the assets belonging to said deceased minor's estate which had been in his intestate's hands, either as guardian or co-administrator of complainant, to him without an accounting or other settlement of said estate, was wrongful as a matter of law.

It is quite difficult to understand what question is sought to be raised by these two assignments, but if it is intended to challenge these findings as not supported by the evidence, they cannot avail appellant. If it is intended to challenge them as conclusions of law, not properly deducible from the facts found, I answer that, as conclusions of law, they are not prejudicial to appellant. They seem to have been inserted by the supreme court of New Mexico, because a cross-appeal had been taken, and are material in that aspect of the case only, as will be hereafter shown.

The appellant was not charged by the decree with any of the consequences of wrong-doing. He was merely required to pay over what was found to be in his hands belonging to other heirs of the deceased child; was allowed to retain seventeen twenty-sixths of the entire estate when, on the findings of fact, he should have been allowed to retain only one-half, the share inherited by his deceased wife, and all costs of the litigation in all courts were charged against the fund.

The eighth finding of fact is as follows:

That after the death of the said Jose Leandro

Perea, Segundo, until the filing of the bill of complaint in this cause, Guadalupe Perea de Harrison during her lifetime, and George W. Harrison, after her death, claimed to hold the assets of the estate of said Jose L. Perea, Segundo, not as administrator, upon the pretense that there could be no distribution of such assets until the final account of Guadalupe Perea de Harrison, as guardian, was settled by the probate court.

This is clearly the finding of an ultimate fact and as such it is supported by the answer of the defendant, as follows:

Further answering, this defendant denies that it was through his influence that said Guadalupe Perea de Harrison pretended and claimed that after the death of her said ward and the qualifications of said complainant and said guardian as administratrix of his estate, she still held the property and effects of said deceased minor in her late capacity of guardian, and the defendant alleges that the said Guadalupe Perea de Harrison was advised by counsel that after the death of her said ward her guardianship would not be terminated until she made a final report as such guardian and until the said report had been approved, and that it was necessary that such final report should be made and approved, and she by order of the court finally discharged as such guardian. And defendant further states that he is so advised by counsel himself, and alleges that such is the fact and that the law so requires.

Transcript, Folios 36-7.

And further answering, this defendant denies that the complainant is entitled to the possession of said estate until the said guardianship accounts have been fully settled.

Transcript, Folio 41.

Further answering, defendant admits that Guadalupe Perea de Harrison died intestate in October, 1889, and this defendant was appointed,

qualified and is now the administrator of her estate *and that he holds possession of said guardianship estate lawfully as such administrator of his deceased wife because her guardianship has never been settled* although she in good faith endeavored to procure a settlement thereof, as hereinbefore alleged.

Further answering, this defendant alleges that that he is entitled to have a legal settlement of said guardianship estate either by said appeal or by the probate court or this honorable court prior to turning over the said estate to the complainant or anybody else, that what the complainant is entitled to is an accounting as to said guardianship and which accounting this defendant stands ready and willing and anxious to have as the administrator of the said Guadalupe Perea de Harrison.

Transcript, Folio 42.

The tenth finding of fact is as follows:

That on the 20th day of October, 1889, Guadalupe Perea de Harrison died, and on the sixth day of January, 1890, George W. Harrison was duly appointed administrator of the said Guadalupe Perea de Harrison, and during all of the period between the death of said Guadalupe Perea de Harrison and his appointment as such administrator he was in possession of the assets of the said Jose Leandro Perea, Segundo, deceased, with full power (knowledge) of their trust character, and *wrongfully refused to pay over the same to Pedro Perea, who was the sole surviving administrator of Jose Leandro Perea, Segundo, and entitled to the custody thereof.*

I suppose that it is intended by the second of these assignments of error to question the italicised part of this finding.

It will not be denied that Pedro Perea was the sole surviving administrator. Was he, as such, entitled to custody of the estate? If he was, the refusal to pay over was wrongful as matter of fact and as matter of law. That the survivor of two administrators is entitled to the custody of the estate would seem to be free from doubt, and that he would be liable to the heirs as for a *devastavit* if he negligently failed to take possession upon the death of his co-administrator, is equally clear. As before stated, however, these conclusions of law, if such they be, did not affect the decree as rendered, and it is wholly immaterial that they are designated findings of fact, because, as findings of fact, they are conclusive upon this court, while, if they are conclusions of law, they are not erroneous.

Eilers vs. Boatman, 11 U. S. 356.

Young's Appeal, 99 Pa. St. 84.

Whiddon vs. Williams, 24 S. E. Rep. 437.

VIII.

The allowance of the solicitor's fee was within the discretion of the court.

The fifteenth assignment of error is as follows:

15. The court erred in finding that the defendant was liable to the complainant for the value of solicitor's fees, at the time of the rendition of the decree therein, in the sum of three thousand, five hundred and eighty-six dollars. Court's XI finding, folio 373.

The twenty-third assignment of error is as follows:

23. The court erred in decreeing in favor of the complainant a solicitor's fee of ten per cent. on the whole amount of the said estate as found by the court.

The eleventh finding of fact is as follows:

That the value of the services of the solicitors in this cause at the time of the rendition of the final decree herein by this court was the sum of three thousand, five hundred and eighty-six dollars and ninety-seven cents.

The court merely found the value of the solicitor's services and decreed the payment of the amount found, out of the fund—something very different from the thing complained of in these two assignments of error.

The power of a court of equity to allow solicitor's fees out of such a fund as was brought under the court's jurisdiction in this proceeding is undoubted, and this court will not look behind this finding of fact, to determine that the allowance was unreasonable. If, however, this court will examine the question of the reasonableness of this allowance the record will show that it is less than it should have been rather than unreasonably large. The district court allowed \$5,000 to complainant for his solicitor's fees, and this amount was reduced by the supreme court to \$3,586.97. The record shows that this litigation had, at the time of the allowance extended over a period of seven years, and that the defendant had resorted to every device which ingenuity could suggest to prevent the distribution of the estate and that the litigation was of the most vexatious character.

The appellant should have been required to pay this solicitor's fee, and this is one of the errors assigned on the cross-appeal, but the power of the court to make this fee a charge upon the fund is beyond controversy.

Trustees v. Greenough, 105 U. S. 532.

Fowler vs. Equitable Trust Co., 141 U. S. 415.

Dodge vs. Tulleys, 144 U. S. 457.

Ex-parte Platt, 2 Wall. Jr. 453.

IX.

The commissions allowed conform to the provisions of the statutes of New Mexico in force when the decree was rendered.

The seventeenth assignment of error is as follows:

17. The court erred in finding that the complainant was entitled to his full statutory commission on the whole of said last mentioned sum. XIV finding, folio 373.

The twenty-fourth assignment of error is as follows:

24. The court erred in decreeing in favor of the complainant the full statutory commission allowed to administrators for the settlement of estates, upon the whole amount of said estate as found by it. Folios 364-5.

The fourteenth finding of fact is as follows:

That Pedro Perea, as surviving administrator, is entitled to the statutory commission upon the said sum of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents, which on the date of said decree amounted to the sum of nineteen hundred and forty-three dollars and forty-eight cents; that Guadalupe Perea de Harrison never claimed to act as administrator of said Jose Leandro Perea, Segundo, and no claim was ever made in this or any other proceeding by her or on her behalf for any compensation or commission as such administratrix.

The statute of New Mexico (*Sec. 2 of Chap. LIV of Laws of 1891*) is as follows:

Sec. 2. Administrators and executors shall be entitled to a commission upon the amount of money, or property at the appraised value, which comes into their hands as such, of ten per cent. on the first three thousand dollars, and five per cent. on all amounts above the first three thousand dollars.

The fact that the decree in this case distributes the fund furnishes no reason for withholding from the administrator his statutory commission as fixed by law. If he failed to take steps to rescue this fund after the death of his co-administrator and the fund had thereby been lost, he would have been liable as for a *destru-avit*. As he was the sole administrator at the time of this decree, and as his co-administrator during her life never claimed to act as administrator, and no claim to commission was ever made in her behalf, complainant was entitled to the full commission, and the court had no discretion to withhold any part of the commission as fixed by the statute.

The supreme court of the territory said in its opinion:

As to the claim that Mrs. Harrison is entitled to share these commissions, it is sufficient to say that both she, in her lifetime, and the defendant, Harrison, then and after her death always insisted that she never held the funds as administratrix, and denied participation in their control as co-administrator for said reason, and no claim for such commissions was ever made until after the case came into this court. It is therefore too late to assert the same, even if it were well founded.

An examination of the record will show that no such claim was made, and that is a sufficient reason for its disallowance.

Lloyd v. Preston, 146 U. S. 630.

San Pedro Co. v. U. S., 146 U. S. 120.

Daking v. Demming, 7 Paige Ch. 101.

Cairns v. Chaubert, 9 Paige Ch. 160.

Matter of De Peyster, 4 Sanf. Ch. 548.

X.

The court properly distributed the assets found to exist in this suit and left the appel-

lant to his other suit to develop the existence of other assets.

The twenty-fifth assignment of error is as follows:

25. The court erred in rendering any final decree whatever in said cause, when it clearly appeared that there had not been any complete accounting and settlement of said estate, but should have reversed and remanded the cause to the district court in order that there might be such full and final settlement and accounting.

The fifth finding of fact is as follows:

That immediately after the intermarriage of the defendant, George W. Harrison, and the said Guadalupe Perea, the said George W. Harrison took charge and control of the affairs of the said Guadalupe Perea, including the assets of the said minor, Jose L. Perea; that he reduced the assets and property of said minor to money and mingled the same with his own funds and deposited the same in bank to his individual credit, and at the time of final decree in the case in the district court he retained subject to his individual control all of the moneys belonging to the estate of Jose Leandro Perea, Segundo.

The sixth finding of fact is as follows:

That Jose Leandro Perea, Segundo, died on the 25th day of August, 1887, being then a minor about eight years of age, and that at the time of the death of said minor he owed no debts, and there were no charges against his estate except funeral expenses and the expenses of his last illness and certain claims for his maintenance by his said guardian.

The record shows that between the death of this child, on the 25th day of August, 1887, and the entry of the decree of the supreme court of the territory on the 26th day of August, 1895, a period of eight years, the appellant had constantly obstructed the settlement of this estate and prevented a distribution, made false

reports to the probate court and false claims as to the grounds upon which settlement was obstructed, and it is insisted by him that the court should lend its aid to this obstruction by allowing him to retain this large sum of money, to the possession of which he has not the shadow of right, until the transactions of the marriage community of the elder Perea and his first wife, beginning in 1842, may be examined, and the accounts of the administrators of the elder Perea may be surcharged and falsified, and until the decree of the probate court settling those accounts is held to have been fraudulently obtained, although all of these things may be done as well after the distribution of this fund as before, if the facts are as claimed by the appellant. It is well settled that a final settlement of an administrator's accounts does not preclude inquiry as to assets of the estate in the hands of the administrator and not embraced in the accounts as settled, or assets which may have come to his hands after such settlement. It is conclusive only as to such matters as were actually passed upon by the court.

Flanders v. Lam. 54 N. H. 392.

Clark, admr., v. Clay. 31 N. H. 393.

Field v. Hitchcock. 14 Pick. 405.

McAfee v. Phillips. 25 Ohio St. 374.

XI.

Damages should be assessed against this appellant, as upon a vexatious appeal.

Under the rules of this court and the statutes of the Territory of New Mexico, the decree in this case bears interest at the rate of six per cent. per annum only, while the conventional rate in that Territory is twelve per cent.

Sec. 1735. Judgments and decrees for the payment of money shall draw the same rate of interest with the contract on which they are rendered; and such rate if other than six per cent., shall be expressed in the judgment or decree, but no judgment or decree shall draw more than twelve per cent. interest.

Compiled Laws 1884, Section 1735.

Unless this court shall upon the cross-appeal of this appellee direct the modification of the decree of the supreme court of the Territory, the only relief he can have against what he contends to be a most indefensible delay, is the award of damages not exceeding ten per cent. upon the amount of the decree, if in the opinion of the court this appeal was taken for delay merely. I am aware that this court will apply this rule only when upon the face of the proceedings there does not appear to have been probable cause for the appeal; but it should be applied in this case, if the sixteenth finding of fact is true, and by that finding this court is concluded if it is a material finding. That finding is as follows:

That George W. Harrison wilfully obstructed the distribution of the assets of the estate of Jose Leandro Perea, Segundo, and by his misconduct rendered it necessary that the complainant should obtain possession of the said assets by the institution of this suit, and that the necessity for this suit arose entirely out of the wrongful conduct of the said George W. Harrison.

A case is certainly made for the assessment of damages under the rule and the statute in pursuance of which the rule was made.

In the case of *Amory v. Amory*, 91 U. S. 357 Chief Justice Waite, delivering the opinion of this court, said:

We can adjudge damages, under Sec. 1010, Rev. Stat. and rule 23, in all cases where it appears that a

writ of error has been sued out merely for delay. This gives us the only power we have to prevent frivolous appeals and writs of error; and we deem it not improper to say that this power will be exercised without hesitation in all cases where we find that our jurisdiction has been invoked merely to gain time.

Attention is called to the following cases in which damages have been allowed by this court upon affirmation:

Palmer v. Arthur, 131 U. S. 60.

T. & P. Ry. Co. v. Volk, 151 U. S. 73.

Gregory, etc., Min. Co. v. Starr, 141 U. S. 224.

Wilson v. Everett, 139 U. S. 616.

Respectfully submitted,

NEILL B. FIELD,

Counsel for Appellee.

Handwritten:
C. J. ...

1897
MAY 10

COURT

STATE OF NEW MEXICO

COUNTY OF ...

WARRANT

Handwritten: 97

... of ...

WILLIAM B. FIELD

ALBUQUERQUE, NEW MEXICO

... for ...

ALBUQUERQUE, N. M.
DAILY CITIZEN PRINTING HOUSE

IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1897.

PEDRO PEREA, <i>et al</i> , <i>Appellants</i> .	} No. —
vs.	
GEORGE W. HARRISON, <i>Appellee</i> .	

BRIEF FOR APPELLANTS.

Statement of the Case.

This is a cross-appeal taken by the appellants from the same decree of the supreme court of the Territory of New Mexico, from which the original appeal is prosecuted by the appellee in this case, the original appeal being case No. 113 of this term calendar. The trial court found many of the allegations of the bill in favor of these appellants and rendered a decree which taxed all of the costs of the litigation including a master's fee of one thousand dollars against the appellee. On appeal to the supreme court of the Territory, that court modified the decree of the trial court so as to make it more favorable to the appellee, although it found the facts

much more strongly against him and from this decree the appellants prayed and were granted a cross-appeal. The statement of the case on the original appeal contains all that is necessary to a proper understanding of the questions sought to be presented by the cross-appeal except in the following particulars. The findings of fact upon which this cross-appeal is prosecuted are as follows:

I.

That Jose L. Perea died about the 31st day of April, A. D. 1883, and left Guadalupe Perea (now Guadalupe Perea de Harrison), his widow, and Jose Leandro Perea, Segundo, son of said Jose and Guadalupe; and also Jose L. Perea, Benecio F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo, Soledad Perea de Castillo, Josefa Perea de Castslo, Filomena Perea de Otero, Barbara Perea de Yrissarri, Cesaria Perea de Hubbell, Jesus M. Perea, and the complainant, Pedro Pera, the last *thirteen* of whom were children of Jose L. Perea by a former wife.

II.

That on the 23rd day of July, 1884, Guadalupe Perea (who afterward intermarried with the defendant, George W. Harrison) was duly appointed guardian of Jose Leandro Perea, Segundo, and as such guardian became possessed of all the assets and property of the said Jose Leandro which he inherited from his deceased father.

IV.

That the defendant George W. Harrison married the said Guadalupe Perea, widow as aforesaid, on the second day of September, 1895.

V.

That immediately after the intermarriage of the defendant George W. Harrison and the said

Guadalupe Perea the said George W. Harrison took charge and control of the affairs of the said Guadalupe Perea, including the assets of the said minor, Jose L. Perea; that he reduced the assets and property to money and mingled the same with his own funds and deposited the same in bank to his individual credit, and at the time of financial decree in the case in the district court he retained, subject to his individual control, all of the moneys belonging to the estate of Jose Leandro Perea, Segundo.

VI.

That Jose Leandro Perea, Segundo, died on the 25th day of August, 1887, being then a minor about eight years of age, and that at the time of the death of said minor he owed no debts, and there were no charges against his estate except funeral expenses and the expenses of his last illness and certain claims for his maintenance by his said guardian.

VII.

That Guadalupe Perea de Harrison and Pedro Perea were duly appointed joint administrators of the estate of Jose Leandro Perea, Segundo, by the probate court of Bernalillo County on the fifth day of September, 1887, and the said Pedro Perea qualified as such administrator on the first day of October, 1887, and the said Guadalupe Perea de Harrison qualified as such administrator on the ninth day of October, 1887.

VIII.

That after the death of the said Jose Leandro Perea, Segundo, until the filing of the bill of complaint in this cause, Guadalupe Perea de Harrison during her lifetime and George W. Harrison after her death claimed to hold the assets of the estate of the said Jose L. Perea, Segundo, not as administrator, upon the pretense that there could be no distribution of

such assets, until the final account of Guadalupe Perea de Harrison as guardian was settled by the probate court.

IX.

That George W. Harrison (having charge of all the assets of the said ward) in the name of his said wife, Guadalupe de Perea de Haraison, made sundry reports to the said probate court as to the condition of the said estate, some containing false entries to her advantage, and together obstructing distribution among the heirs.

X.

That on the 20th day of October, 1889, Guadalupe Perea de Harrison died, and on the sixth of January, 1890, George W. Harrison was duly appointed administrator of the said Guadalupe Perea de Harrison, and during all of the period between the death of the said Guadalupe Perea de Harrison and his appointment as such administrator he was in possession of the assets of the said Jose L. Perea, Segundo, deceased, with full power (knowledge) of their trust character, and wrongfully refused to pay over the same to Pedro Perea who was the sole surviving administrator of Jose Leandro Perea, Segundo, and entitled to the custody thereof.

XII.

That the defendant, George W. Harrison, had in his possession and was liable to the complainant on the day of the rendition of the final decree herein by this court, the sum of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents, which was the total amount of moneys for which he is liable, as hereinbefore set out, with interest thereon at six per cent per annum, after allowing all credits to which he or the said Guadalupe Perea de Harrison was entitled.

XV.

That the said Guadalupe Perea de Harrison in her lifetime failed to keep correct accounts of the assets of Jose Leandro Perea, Segundo, which came into her possession, and that the said George W. Harrison also failed to keep correct accounts of his dealings with the said assets.

XVI.

That George W. Harrison wilfully obstructed the distribution of the assets of the estate of Jose Leandro Perea, Segundo, and by his misconduct rendered it necessary that the complainant should obtain possession of the assets by the institution of this suit, and that the necessity for this suit arose entirely out of the wrongful conduct of the said George W. Harrison.

These facts being conclusive upon this court, the contention is that the decree of the supreme court of the Territory is erroneous in the following particulars:

- (a) That the distribution should have been to the administrator of the deceased mother one-half, and to the twelve half brothers and sisters of the deceased having the same father the other half, excluding Grover William Harrison as an heir.
- (b) That appellee, George W. Harrison, as administrator of his deceased wife, should have been decreed to be entitled to one-half only of the fund.
- (c) That the said Harrison should have been decreed to pay all the costs, including the solicitor's fee, out of his private estate.
- (d) That in ascertaining the amount in his hands, and for which he was liable, he should have been charged interest at the rate of twelve per cent. per annum—the highest rate allowed by the laws of the Ter-

ritory of New Mexico, and that said interest should have been compounded annually.

On the cross-appeal, errors are assigned as follows:

I.

The said court erred in failing to decree the distribution of the fund upon the basis of one half to the estate of Mrs. Harrison and one half of the remainder to the twelve surviving children of Jose Leandro Perea, to-wit: Jose L. Perea, Benicio F. Perea, Mariano Perea, Jacobo Perea, Jesus M. Perea, Pedro Perea, Beatriz Perea de Armijo, Soledad Perea de Castillo, Barbara Perea de Yrsarri, Filomena Perea de Otero, Cesaria Perea de Hubbell and Josefa Perea de Castillo, or one twenty-fourth part of the fund to each of said last named twelve persons.

II.

The said court erred in decreeing that George W. Harrison be permitted to retain in his possession seventeen twenty-sixths of the fund, while the findings of the court warrant a decree permitting him to retain no more than one half of said fund.

III.

The said court erred in failing to decree all of the costs of said litigation including solicitor's fees to be paid by the appellant, George W. Harrison, and in decreeing the payment of the same out of the fund.

IV.

The court erred in failing to charge the said George W. Harrison with interest at the rate of 12 per cent. per annum, the highest rate allowed by the laws of New Mexico, on the fund found to be in his hands, and to compound said interest annually in stating the amount for which said Harrison was liable.

The supreme court of the Territory, apparently following the lead of the court below, which held that Grover William Harrison was an heir-at-law of his

half brother, Jose L. Perea, Second, distributed this estate on the basis of one half to the widow, which appellant, Harrison, as her administrator was permitted to retain, and divided the other half, apparently, into thirteen parts. I say, apparently, for the finding of the court on this point would seem to indicate a different intention, although the decree as drawn and signed gives one twenty-sixth part to each of eight heirs, leaves seventeen twenty-sixths in the possession of Harrison and leaves one twenty-sixth undisposed of, evidently by mere clerical mistake. It is only fair to say that the court below found that Harrison had succeeded to the rights of three of the heirs, to-wit: Filomena Perea de Otero, Jesus M. Perea and Cesaria Perea de Hubbell, and the failure of the supreme court to so find is a mere oversight, which appellee is entirely willing to have corrected by this court, if it may be done by his consent. He insists, however, if this is done that he shall be properly acquitted of all further liability of or such part of the fund as is left by this court's decree in Harrison's hands. That this is a mistake is quite obvious. The first finding of fact is as follows:

That Jose L. Perea died about the 21st day of April, A. D. 1883, and left Guadalupe Perea (now Guadalupe Perea de Harrison), his widow, and Jose Leandro Perea, Segundo, son of said Jose and Guadalupe; and also Jose L. Perea, Benicio F. Perea, Mariano Perea, Jacobo Perea, Beatriz Perea de Armijo, Soledad Perea de Castillo, Josefa Perea de Castillo, Filomena Perea de Otero, Barbara Perea de Yrisarri, Cesaria Perea de Hubbell, Jesus M. Perea, and the complainant, Pedro Perea, the last *thirteen* of whom were children of Jose L. Perea by a former wife.

While it is there said that the last thirteen of whom were children of Jose L. Perea by a former wife, but twelve names appear and the whole record shows that

he had but twelve children by his first wife. I insist that Guadalupe P. Harrison inherited one-half of this estate and the twelve children by the first wife the other half, and that it should have been so distributed.

I.

The distribution made by the decree is erroneous to the prejudice of the cross appellant.

The only reasonable explanation I can find of this error, is that the district court held that, Grover William Harrison, who was the son of Guadalupe P. Harrison and her husband, George W. Harrison, and thus a half brother of the deceased, was entitled to inherit with the children of Jose L. Perea by his first wife, but if this is the explanation, such holding is clearly erroneous. The supreme court of the territory does not mention Grover William Harrison, as an heir, and yet distributes the estate as if there were thirteen half brothers and sisters and a mother. The statute of the Territory in force at the death of the decedent and under which the distribution must be made is as follows. Part of Chapter XXXII of Laws of 1887:

Sec. 3. If any intestate shall die without lawful issue or their descendants alive, one-half of the estate shall go to the father and mother of such intestate, as joint tenants, or if either be dead, to the survivor, and the other half to the brothers and sisters and to the descendants of such as are dead, as tenants in common.

Sec. 6. Kindred of the half blood shall inherit equally with those of the whole blood; but if the estate shall have come to the intestate by gift, devise, or descent from any ancestor, those only who are of the blood of such ancestor shall inherit: Provided, that on the failure of such kindred, other kindred of the half blood shall inherit as if they were of the whole blood.

At the time of the death of Guadalupe P. Harrison in October, 1889, the statute regulating descents and distributions, if deemed to be material, is as follows, being part of section 21 of chapter 90 of the laws of 1889:

Sec. 21. Sections 1410 to 1422, both inclusive, of the compiled laws of 1884, are repealed, and the following sections, bearing the same numbers respectively, are hereby substituted in place of said repealed sections:

Sec. 1810. The estate after having been inventoried and appraised as required by law, shall be divided and distributed as hereinafter provided, to-wit:

First. All property, both real and personal, brought into the marriage community by the surviving husband or wife, or acquired by him or her by inheritance, donation or legacy, shall constitute his or her separate estate, and shall be subject to the private debts of such survivor.

Second. All property, both real and personal, acquired by either the husband or wife during the existence of the marriage community, otherwise than as stated in the last preceding paragraph, shall constitute the acquet property, and shall be liable for the common debts.

Third. The separate estate of the surviving husband or wife shall remain the property of such survivor absolutely, and shall be set apart to such person without any charge thereon growing out of the estate, but subject only to his or her private debts; and in case any of the separate property of the wife has been reduced to possession or appropriated by the husband, or so commingled with his property or with the acquet property that it cannot be identified or separated then the just value thereof shall be set apart for the widow as a preferred claim, free of all encumbrances in connection with the estate, except in favor of bona fide creditors of the husband or of the marriage community, without notice of such claim.

Fourth. One half of the acquet property which re-

mains after the payment of the common debts of the marriage, shall be set apart to the surviving husband or wife absolutely.

Section 1411. Subject to the rights, charges and deductions hereinbefore provided, and to the payment of the debts of the decedent, the remainder of the acquet property and separate estate of the decedent shall constitute the body of the estate for descent and distribution, and may be disposed of by will, or in the absence of a will, shall descend as follows: one-fourth thereof to the surviving husband or wife and the remainder in equal shares to the children of the decedent.

Thus it will be seen that three-fourths of the one-half of this estate passed on the death of Guadalupe P. Harrison to Grover William Harrison and the other fourth to George W. Harrison and as it appears that George W. Harrison had authority as administrator of Guadalupe P. Harrison to receive the portion of the estate inherited by his deceased wife, I insist that the decree of the supreme court of the Territory should be so modified as to require the said George W. Harrison to pay over to the cross appellant the entire fund less one-half, which as administrator of his deceased wife he is entitled to receive, and that the other half of the estate when paid over be distributed as follows:

- To Jose L. Perea, one twenty-fourth.
- To Benicio F. Perea, one twenty-fourth.
- To Mariano Perea, one twentyfourth.
- To Jacobo Perea, one twenty-fourth.
- To Jesus M. Perea, one twenty-fourth.
- To Pedro Perea, one twenty-fourth.
- To Beatriz Perea de Armijo, one twenty-fourth.
- To Soledad Perea de Castillo, one twenty-fourth.
- To Barbara Perea de Yrisarri, one twenty-fourth.
- To Filomena Perea de Otero, one twenty-fourth.
- To Cesaria Perea de Hubbell, one twenty-fourth.
- To Josefa Perea de Castillo, one twenty-fourth.

I do not object to having the modified decree so framed as to permit Harrison to retain the share of any one of the heirs to whose rights he has succeeded, upon the production of evidence of his right to receipt for the same, if he be entitled to do so, and executing to the cross-appellant a proper receipt for that portion of the fund. I think it quite clear, upon these findings of fact, that it was by a mere oversight that the decree of the supreme court of the territory was not rendered in the form for which I contend. It may be true that the trial court found that Grover William Harrison was an heir and so decreed, and it is also true that no cross-appeal was prayed from that decree, but the supreme court found that Grover William Harrison was not an heir, by finding who were the heirs and not mentioning him as one, and then distributed the estate as if he were an heir, and from that decree a cross-appeal is prosecuted.

The act of congress under which this case is reviewed here is as follows:

Sec. 2. That the appellate jurisdiction of the supreme court of the United States over the judgments and decrees of said Territorial courts in cases of trial by jury shall be exercised by writ of error, and in all other cases by appeal according to such rules and regulations as to form and modes of proceeding as the said supreme court have prescribed or may hereafter prescribe:

Provided, That on appeal, instead of the evidence at large, a statement of the facts in the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and

transmitted to the supreme court together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said supreme court heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal.

Sup. Rev. St. U. S. Vol. 1, page 7.

This statute has been so often construed by this court that it is hardly necessary to call attention to the cases in which it has been held that in such matters the question is, does the findings of fact taken as true, support the decree. I insist that the findings of fact do not support a decree dividing this estate into twenty-sixths.

Grayson v. Lynch, 163 U. S. 473.

Gildersleeve v. N. M. Min. Co., 161 U. S. 573.

Idaho Land Co. v. Bradbury, 132 U. S. 513.

San Pedro Co. v. U. S., 146 U. S. 130.

Smith v. Cale, 144 U. S. 525.

Mining Co. v. Machine Co., 151 U. S. 450.

Stringfellow v. Cain, 99 U. S. 610.

Gray v. Howe, 108 U. S. 12.

Zeckendorf v. Johnson, 123 U. S. 617.

Hawes v. Victoria Mining Co., 160 U. S. 303.

II.

The court should have decreed all of the costs of this proceeding, including solicitor's fees, against the appellant Harrison individually.

The supreme court of the territory found the following facts:

That immediately after the intermarriage of the defendant George W. Harrison and the said Guadalupe Perea the said George W. Harrison took charge and control of the affairs of the said Guadalupe Perea, including the assets of the said minor, Jose L. Perea; that he reduced the assets and property of said minor to money and mingled the same with his own funds and deposited the same in bank to his individual credit, and at the time of final decree in the case in the district court he retained, subject to his individual control, all of the moneys belonging to the estate of Jose Leandro Perea, Segundo.

X.

That on the 20th day of October, 1889, Guadalupe Perea de Harrison died, and on the sixth of January, 1890, George W. Harrison was duly appointed administrator of the said Guadalupe Perea de Harrison, and during all of the period between the death of the said Guadalupe Perea de Harrison and his appointment as such administrator he was in possession of the assets of the said Jose L. Perea, Segundo, deceased, with full power (knowledge) of their trust character, and wrongfully refused to pay over the same to Pedro Perea who was the sole surviving administrator of Jose Leandro Perea, Segundo, and entitled to the custody thereof.

XII.

That the defendant, George W. Harrison, had in his possession and was liable to the complainant on the day of the rendition of the final decree herein by this court, the sum of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents, which was the total amount of moneys for which he is

liable, as hereinbefore set out, with interest thereon at six per cent per annum, after allowing all credits to which he or the said Guadalupe Perea de Harrison was entitled.

XV.

That the said Guadalupe Perea de Harrison in her lifetime failed to keep correct accounts of the assets of Jose Leandro Perea, Segundo, which came into her possession, and that the said George W. Harrison also failed to keep correct accounts of his dealings with the said assets.

XVI.

That George W. Harrison wilfully obstructed the distribution of the assets of the estate of Jose Leandro Perea, Segundo, and by his misconduct rendered it necessary that the complainant should obtain possession of the assets by the institution of this suit, and that the necessity for this suit arose entirely out of the wrongful conduct of the said George W. Harrison.

The authorities conclusively establish the proposition that a trustee *ex-maleficio* is subject to the same penalties as a trustee regularly appointed, and it only remains to determine what those penalties are, as against a trustee who fails to keep correct accounts, makes false reports and by his wrongful conduct renders litigation necessary for the preservation of a trust fund.

Upon the authorities it is clear that the trustee and not the fund should bear the burden of costs thus rendered necessary. Mr. Daniel says:

If a suit is occasioned by the misconduct or obstinacy of a trustee, he may be compelled to pay the whole costs of it. Thus, where a bill

for specific performance of an agreement was made necessary by a trustee refusing to join in the conveyance, Lord Thurlow was of opinion that the trustee ought to pay all the costs of the suit, and accordingly directed the plaintiff to pay to the other defendants all their costs of the suit, and to recover them over, together with his own costs, from the defendant, the trustee.

In the case last referred to, the Registrar appears to have doubted whether, according to the practice of the court, the plaintiff, having been successful against the other defendants, and obtained against them a decree for specific performance, could, in point of form, be ordered to pay them their costs; but the Lord Chancellor thought that the decree was correct, according to the course of the court. In fact under ordinary circumstances, no other method exists, by which a defendant, who has by his conduct occasioned the suit, can be made to pay the whole costs of it; for the delinquent defendant cannot be decreed to pay the costs of a co-defendant to that defendant himself, as that would in effect be a decree between co-defendants. The only method, therefore, of effecting the object of compelling the delinquent defendant to pay the costs of the other defendant, is to order the plaintiff to pay them, and then permit him to receive them again from the defendant, whose delinquency has given rise to the litigation.

2 Dan. Chy. Pl. & Pr. 5 Am. Ed. 1406.

In a New Jersey case, it was said by the ordinary delivering the opinion of the court:

The court were right in charging the executors, individually, with all the costs of the suit. The evidence in the case and the whole history of the case, creates the belief that most of the difficulty in the case has been occasioned by the

conduct of one of the executors. And since the filing of the account, with a large amount of funds in their hands, they have permitted great and unwarrantable delay to occur in the final settlement. It is a mistaken idea that executors have acquitted themselves of their duty by filing their account in the orphans' court, and then permitting it to slumber, or to draw its slow length through the courts until all the law's delays are exhausted, or till they are goaded to action by the order of the court. It is clearly their duty, not only to exhibit their account for allowance, but to use diligence in bringing it to a final settlement. They are often trustee for widows and minors, or absent persons and others, whose rights are unrepresented. It is an unjustifiable abuse of their trust to make the law's delays a pretext for holding the fund of the estate in their hands, often for their own benefit and greatly to the prejudice of those interested. I think the decision of the court in this regard eminently just as well as lawful, and calculated to effect a salutary check upon a prevalent and gross abuse.

Execr. of Egerton v. Egerton, 17 N. J. Eq. 424

Penfield v. Bouch, 4 Hare 271.

Lyse v. Kingdon, 1 Collier, 184.

Hampshire v. Bradley, 2 Collier 34.

Warter v. Anderson, 11 Hare 301.

Executors of Egerton v. Egerton, 17 N. J. Eq. 419.

Lathrop v. Smalley's Executors, 23 N. J. Eq. 192.

Wabbass v. Armstrong, 10 N. J. Eq. 263.

Post v. Stephens, 13 N. J. Eq. 293.

In re Mathewson's estate, 40 N. Y. Sup. 140.

In re Bennet's estate, 42 N. Y. Sup. 674.

Atty. Gen. v. Alford, 4 DeG. M & G. 851.

III.

Interest at the highest rate allowed by law should have been charged against the appellant.

While this court cannot, on this record, re-examine the accounts of appellant, sufficient appears as to the method adopted by the supreme court of the Territory in stating the accounts against him to show affirmatively that the method was more favorable to him than the law warrants. The decree shows that the court computed interest on the decree of the district court from June 29th, 1893 to the 26th day of August, 1895, at the rate of six per cent per annum. It is true that there is nothing before this court which would authorize it to re-examine the account as stated by the master up to the 26th day of October, 1892, but there is enough in the record to show that the appellant has only been charged interest at the rate of six per cent per annum from this date and that this court should correct this error by directing that interest on the balance found by the master be charged at the rate of twelve per cent per annum from the date of the finding of the balance to the date of the decree in the supreme court of the Territory, and that the decree of that court should in turn bear interest at twelve per cent per annum. If this were done, the decree thus rendered would under the rules of this court bear interest at twelve per cent per annum until paid. The decree of the supreme court on this point is as follows:

“It appearing to the court that the special master in this cause found that on the 26th day of October,

1892, there was in the hands of the defendant, George W. Harrison, the sum of thirty thousand three hundred and sixty-one dollars and twenty-nine cents; that the court below in its decree found that on the date thereof the said sum, with interest calculated to the nineteenth day of June, 1893, the date of said decree, amounted to the sum of thirty-one thousand five hundred and forty-five dollars and thirty-two cents, it is found by this court that the said defendant, George W. Harrison should be charged with interest upon said sum up to this 26th day of August, 1895, amounting to the sum of forty-three hundred and twenty-four dollars and forty-five cents, and that therefore the said defendant is chargeable as of this date of the sum of thirty-five thousand eight hundred and sixty-nine dollars and seventy-seven cents.

The only statutes of the Territory which bear on this question are compiled as sections 1734, 1735, 1736 and 1737 of the Compiled Laws of 1884, as follows:

Sec. 1734. The rate of interest, in the absence of a written contract fixing a different rate, shall be six per cent per annum, in the following cases:

First—On money due by contract.

Second—On judgments and decrees for the payment of money when no other rate is expressed.

Third—On money received to the use of another, and retained without the owner's consent expressed or implied.

Fourth—On money due upon the settlement of matured accounts from the day the balance is ascertained.

Fifth—On money due upon open account, after six months from the date of the last item.

Sec. 1735. Judgments and decrees for the payment of money shall draw the same rate of interest with the contract on which they are rendered; and such rate if other than six per cent., shall be expressed in the judgment or decree, but no judgment or decree shall draw more than twelve per cent. interest.

Sec. 1736. In current or open accounts in commercial houses there shall not be collected more than six

per cent. interest thereon, six months after the delivery of the last article: Provided, that in written contracts for the payment of money, it shall not be legal to recover more than twelve per cent. interest per annum.

Sec. 1737. Any person, persons or corporation, who shall hereafter charge, collect, or receive from any person a higher rate of interest than twelve per cent. per annum, shall be guilty of a misdemeanor and upon conviction thereof before the district court or a justice of the peace, shall be fined in a sum not less than twenty-five dollars nor more than one hundred dollars, and such person, persons or corporations shall forfeit to the person of whom such interest was collected or received or to his executors, administrators or assigns, double the amount so collected or received upon any action brought for the recovery of the same within three years after such cause of action accrued.

It will be at once observed that there is nothing in this legislation, which can be construed as limiting the power of a court of chancery over a trustee who has wrongfully used trust funds for his own benefit, has failed to keep correct accounts, who has made false reports and who has obstructed the distribution of the trust fund, except the last sentence of section 1735. If the trial court had charged the appellant with interest at the rate of twelve per cent. per annum up to the time of the rendition of the decree in that court, it would certainly have been within the equity of the provisions of section 1735 and within the letter of the last sentence if it had provided that the decree should bear interest at twelve per cent. per annum. It may, however, be said in answer to this that interest is not charged to a trustee by way of punishment for breach of trust and that this court cannot examine the evidence in the court below and from it determine whether or not the appellant received interest on this money, and it may be that the evidence would show that he accounted for every penny of interest which he re-

ceived. But the supreme court found the following facts:

V.

That immediately after the intermarriage of the defendant, George W. Harrison, and the said Guadalupe Perea, the said George W. Harrison took charge and control of the affairs of the said Guadalupe Perea, including the assets of the said minor, Jose L. Perea; that he reduced the assets and property of said minor to money and mingled the same with his own funds and deposited the same in bank to his individual credit, and at the time of final decree in the case in the district court he retained subject to his individual control all of the moneys belonging to the estate of Jose Leandro Perea, Segundo.

XV.

That the said Guadalupe Perea de Harrison in her lifetime failed to keep correct accounts of the assets of Jose Leandro Perea, Segundo, which came into her possession, and that the said George W. Harrison also failed to keep correct accounts of his dealings with the said assets.

XVI.

That George W. Harrison wilfully obstructed the distribution of the assets of the estate of Jose Leandro Perea, Segundo, and by his misconduct rendered it necessary that the complainant should obtain possession of the said assets by the institution of this suit, and that the necessity of this suit arose entirely out of the wrongful conduct of the said George W. Harrison.

And in the opinion of the court it is said:

The case went to a master who found all the material facts in favor of complainant and said master stated an account more favorable to the defendant than the facts justified, but we will not disturb his findings abundantly sustained by the evidence and the rules of law applicable to such cases.

I insist that upon the facts found the appellant is chargeable, as matter of law, with interest at the high-

est rate and that it was not a matter of discretion but was the imperative duty of the supreme court of the Territory to apply the law to the facts found and re-state the account on that basis. So long as the facts are doubtful or uncertain the court has a discretion to adjust charges of this character upon an equitable basis, but when the supreme court found the facts stated in the three findings quoted, it made a case where the law fixed the defendant's liability at the highest rate of interest allowed by law, and it involved no disturbance of the master's findings for the court to so adjudge, while to do otherwise was and is to allow this appellant to profit by his own wrong. The legal principle here involved is well stated by the supreme court of Michigan as follows:

The precise sum the *cestui que trust* should receive, and which the trustee should pay, is that which the former has lost by the failure of the latter to honestly and properly administer the trust. Where the trustee has misappropriated the fund, or neglected to invest it when he should, the *cestui que trust* will be presumed to have lost at least the lawful interest upon the same; and, if the fund has been so used that the accumulations in the hands of the trustee reach beyond the interest on the fund, the court will decree to him, as his loss, whatever may have been so received.

If the trustee fails or refuses to account, he may be charged with the fund, and such accumulations thereon as the best management by the most successful business men would be likely to secure for it, as it will be presumed the trustee has received so much, or he would have reported his gains, and which will in such case be held the measure of the *cestui que trust's* loss. If such gains have been greater than the interest, or the interest compounded, it is given for the beneficiary, not on the ground that it would be presumed to earn a larger sum, but because the

court will not allow the trustee to take profit from his own wrong; and that, as between him and the beneficiary, the latter has the better right to the excess, the interest of no other person being involved therein. If, however, the trustee has shown an utter disregard for the interest of the beneficiary, and deliberately planned to absorb the trust fund by his fraudulent disposition of it to his use, and attempt to destroy or suppress the evidence of his management of the fund, and the profits he has received therefrom, and so far succeeds in his purpose that no one but himself can trace the fund or its accumulations, and when called upon to account he renders false and fictitious accounts, so defective as to be impossible of proper judicial investigation and adjudication, in such case, if the amount of the fund which he has used can be ascertained, he may be charged therewith, and the largest profits that can lawfully be made thereon by the most sagacious and expert business men in their management of money, even to the allowing of compound interest at the highest lawful rates, and making rests annually or semi-annually, if it shall appear just and equitable to the court, in securing to the *cestui que trust* the use of his property, of which he has been deprived. The law entitled him to all the accumulations of his property while in the trustee's hands, and, under the circumstances stated, when he refuses to account, it will be presumed he has received such accumulation, and that such amount is the beneficiary's loss, and court of equity may give it to him. Such sum is not awarded for the purposes of punishment or imposing a penalty on the trustee for his maladministration of the trusts. Courts of equity do not impose or enforce penalties, or punish parties for their wrongs in the administration of trusts, but only furnishes the adequate means of redress when the law fails so to do.

Perrin v. Lepper, 72 Mich. 554-5-6.

In another case the same court said:

It was in defendant's power for several years after suit was commenced, if not always, to show the exact profits of his business. His refusal to do so authorizes us to believe that he thought they would exceed anything that complainant could show. In our opinion, the commissioner placed the profits quite as low as the proofs would have warranted. We are strongly impressed with the belief that the defendant has profited by his contumacious silence. But as complainant has not appealed, we cannot enlarge the sum decreed. Compound interest was proper under the circumstances.

Heath v. Waters, 40 Mich. 472.

In the case of *Docker vs. Somes* (2 Mylne & Keen, 664) Lord Brougham, commenting on the English cases, which hold that interest at the legal rate is the full measure of the trustee's liability, unless it affirmatively appears that he has earned a greater amount through his wrongful use of trust funds, said:

Whenever a trustee, or one standing in the relation of a trustee, violates his duty and deals with the trust estate for his own behoof, the rule is, that he shall account to the *cestui que trust* for all the gain he has made. Thus, if trust money is laid out in buying and selling land, and a profit made by the transaction, that shall go, not to the trustee who has so applied the money, but to the *cestui que trust*, whose money has been thus applied. In like manner (and cases of this kind are more numerous), where a trustee or executor has used the fund committed to his care in stock speculations, though loss, if any must fall upon himself; yet, for every farthing of profit he may make shall be accountable to the trust estate.

Such being the undeniable principle of equity, such the rule by which breach of trust

is discouraged and punished—discouraged by intercepting its gains, and thus frustrating the intentions that causes it; punished by charging all loss to the wrong-doer, while no profits can ever accrue to him—can the court consistently draw the line as the cases would seem to draw it, and except from the general rule those instances where the risk of the malversation is most imminent; those instances where the trustee is most likely to misappropriate; namely, those in which he uses the trust funds in his own traffic. At first sight this seems grossly absurd, and some reflection is required to understand how the court could ever, even in appearance, countenance such an anomaly. The reason which has induced judges to be satisfied with allowing interest only, I take to have been this: They could not easily sever the profits attributable to the trust money from those belonging to the whole capital stock; and the process became still more difficult, where a great portion of the gains proceeded from skill or labor employed upon the capital. In cases of separate appropriations there was no such difficulty; as where land and stock had been bought and then sold again at a profit: and here, accordingly there was no hesitation in at once making the trustee account for the whole gains he had made. But where, having engaged in some trade himself, he had invested the trust money along with his own, there was so much difficulty in severing the profits which might be supposed to come from the money misapplied from those which came from the rest of the capital embarked, that it was deemed more convenient to take another course, and instead of endeavoring to ascertain what profit had been really made, to fix upon certain rates of interest as the supposed measure or representative of the profits, and assign that to the trust estate.

This principal is undoubtedly attended with one advantage: it avoids the necessity of an in-

vestigation of more or less nicety in each individual case, and it thus attains one of the important benefits resulting from all general rules. But mark what sacrifices of justice and of expediency are made for this convenience. All trust estates receive the same compensation, whatever risks they may have run during the period of their misappropriation; all profit equally, whatever may be the real gain derived by the trustee from his breach of duty; nor can any amount of profit be reached by the court, or even the most moderate rate of mercantile profit, that is the legal rate of interest, be exceeded, whatever the actual gains may have been, unless by the very clumsy and arbitrary method of allowing rests, in other words, compound interest; and this without the least regard to the profits actually realized; for, in the most remarkable case in which this method has been resorted to, *Raphael v. Boehm*, (which indeed, is always cited to be doubted, if not disproved), the compound interest was given with a view to the culpability of the trustee's conduct, and not upon any estimate of the profits he had made by it.

But the principle objection which I have to the rule is founded upon its tendency to cripple the just power of this court in by far the most wholesome and indeed necessary exercises of its functions, and the encouragement thus held out to fraud and breach of trust. What avails it towards preventing such malversations, that the contrivers of sordid injustice feel the power of the court only where they are clumsy enough to keep the gains of their dishonesty severed from the rest of their stores? It is in vain they are told of the court's arm being long enough to reach them, and strong enough to hold them, if they know that a certain delicacy of touch is required, without which the hand might as well be paralyzed or shrunk up. The distinction, I will not say sanctioned, but pointed at by the negative authority of the cases, proclaims to executors and trustees, that they have only to invest the trust money in the speculations, and expose it to the hazards of their own commerce, and be charged 5 per cent. on it: and

then they may pocket 15 or 20 per cent. by a successful adventure.

After quoting at some length from the opinion in *Treves v. Townsend*, 1 Bro. C. C. 384, his Lordship proceeds:

If the case shows, on the one hand, the impression to have been that the court would not go to the real amount of profits made, but only inquire as to these for the purpose of ascertaining whether more than the usual rate of 4 per cent. shall be allowed, limiting itself to the legal interest of 5 per cent., if so much has been made; it as clearly proves on the other hand, that there was no disposition to shrink from an inquiry, now represented as impossible, into the rate of profits, and the portion of them attributable to the trust fund. If, however, it were to be inferred from this case, that trust moneys used in the trustee's trade cannot be charged more than 4 per cent, unless more be made of them, the doctrine would be dangerous indeed. Lord Loughborough seems to have taken a far sounder view of the principles on which the court deals with breach of trust, when he charged 5 per cent. simply on account of the unjustifiable use of the money, and without any regard to the gains made by the malversation. When Lord Thurlow stated that 4 per cent. was the rate usually allowed, and that it was never to be exceeded but in a special case, he laid down the admitted rule; but a special case was here abundantly made, when it was shown that the assignee had allowed sixteen years to elapse before offering to make a dividend, and had, during that period, trafficked with the fund.

McKnight Excr. v. Walsh, 23 N. J. Eq. 146.

Same case, 24 N. J. Eq. 509.

Hook v. Payne, 14 Wall. 257.

Schieffelin v. Stewart, 1 John. Chy. 620.

Spear v. Tinkham, 2 Barb. Chy. 211.

Utica Ins. Co. v. Lynch, 11 *Paige Chy.* 524.

Estate of Clark, 53 *Cal.* 359.

Clarkson v. Depeyster, 1 *Hopk.* 424.

Vorhees v. Stoothoff, 11 *N. J. Law*, 152.

Barney v. Saunders, 16 *How.* 542.

Attorney Gen. v. Alvord, 4 *DeG. M. & G.* 851.

2 *Story Eq. Juris*, 1277.

1 *Perry on Trusts*, S. 471.

Lewin on Trusts, 261-3-4.

Hill on Trusts, *Star Pages* 372-5.

I respectfully submit that upon this cross-appeal, the decree of the supreme court of New Mexico should be modified as herein indicated.

NEILL B. FIELD,
Counsel for Appellant.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1897.

PEDRO PEREA,	}	Cross Appeal.
vs.		
GEORGE W. HARRISON,		
	Appellant,	
	Appellee.	

I.

The court below made an order on the application of the complainant below granting him a cross-appeal. No affidavit of value was filed, and no bond for costs was given.

"Cross Appeals must be prosecuted like other appeals. Every appellant to entitle himself to be heard on his own appeal, must appear here as an actor in his own behalf by having the appearance of counsel entered, and giving the security required by the rules. Otherwise, if he is here as appellee on the appeal of his adversary, he will be heard only in support of the decree as it was entered below. If he asks affirmative relief beyond what he got below, he must enter himself in this court in due time as the prosecutor of his own appeal, even though his adversary has docketed the case against him."

The "S. S. Osborne," 105 U. S. 447-451. Also see Hilton vs. Dickinson 108 U. S. 165. Farrar vs. Churchill 135 U. S. 609.

II.

The only matters the cross appellant can have revived in this Court are such matters as the Supreme Court of the Territory determined against him. He did not appeal from the decree rendered by the District Court to the Supreme Court of the Territory. His only standing in the Supreme Court of the Territory, under the authorities above cited, was to sustain the decree of the District Court.

The Supreme Court of the Territory is an appellate court. "Without an appeal a party will not be heard in an appellate court to question the correctness of the decree of the trial court."

Cherokee Nation vs. Blackfeather, 155 U. S.

221.

The Stephen Morgan, 94 U. S. 599.

In the case of the San Pedro & Company vs. United United States, this Court quotes from the decision of the Supreme Court of the Territory as follows:

"There being no cross appeal by the appellee, we decline to review the action of the court below, as that is not before us on the appeal, and overrule said motion and decline any action upon it for reasons stated."

This court approved this proposition and said: "We cannot review the action of the District Court,

* * *

San Pedro & Co. vs. U. S. 146 U. S. 138.

In *Topliff vs. Topliff*, 145 U. S. 173, this Court said:

"And in *McMicken vs. Perin*, 18 How. 507, it was held directly that this court will not interview a master's report upon objections taken here for the first time. In affirmance of this principle, Rule 21 (Sub. 2) requires that 'When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.' This presupposes that the particular exception relied upon was taken in the court below and was passed upon adversely to the appellant. Proper practice requires that objections to a master's report shall be taken in that court, that any errors discovered therein may be rectified by the court itself, or by a reference to the master for a correction of his report, without putting parties to the delay and expense of an appeal to this court. It would be manifestly unjust if this court, after having affirmed the action of the court below in every other particular, should take up an error in a master's report which was not called to its attention, and reverse the case upon that ground, when if exception had been duly taken, the error could have been at once corrected."

So in *Burns vs. Rosenstein*, 135 U. S., 455, the court in speaking of an assignment of error, not based on exceptions to the master's report said:

"If he went beyond the order of reference, or if the account taken by him, involved a misconception of the provisions of that agreement, the defendants should have brought those matters to the attention of the court by exceptions to the report. Having failed to do this, they cannot, in this court for the first time object that the master proceeded upon erroneous views as to the contract between the parties. Equity Rule 83; *Brockett vs. Brockett*, 3 How. 692; *McMicken vs. Perin* 18 How. 504. *Story vs. Livingston* 13 Pet. 359-366; *Medsker vs. Bonekroaker* 108 U. S. 66-71."

III.

The cross-appellant in the district court filed a motion to confirm the master's report, Record, folio 337. At the same time he filed two exceptions to the report. Record, folio 207. He has filed four assignments of error in this court, and we submit that his third assignment of error is the only one that rests on any exception to the master's report. The second exception to the master's report is as follows:

"That the said master should have found, as a matter of law, that the expense of this litigation, including reasonable solicitors' fees, are chargeable to the portion of the estate belonging to the said George W. Harrison, and that the said George W. Harrison should pay over to the said complainants, as administrators, statutory fees on the portion remaining in his hands, and the solicitors; fees and other expenses of this litigation." His third assignment of error is as follows: "The said court erred in failing to decree all of the costs of this litigation, including solicitors' fees, to be paid by the appellant, George W. Harrison, and in decreeing the payment of the same out of the fund."

An inspection of the decree rendered by the District Court will show that the sum of \$5,000.00 solicitors' fees, and the sum of \$1,727.26, commissions allowed the administrator, were to be deducted from the total amount found due, to-wit: \$31,545.32, and the remainder was divided into twenty-six parts. The defendant, it was decreed, should retain seventeen of these parts and the other nine were to be paid to the complainant. Record, folio 346-7.

The master's findings as to amounts, and recommendations, were followed, except that the master recommended that the complainant and cross-appellant only be allowed commissions on the nine twenty-sixths, to be paid over to him. Record folios 123-124. The

District Court generously allowed him commissions on the whole, thereby sustaining in part the cross-appellant's second exception to the master's report. The master recommended that the solicitor's fee of \$5,000 be charged against the defendant. The District Court decreed that both the commissions and the solicitor's fee should first be deducted from the total amount, and that it should then be divided as above stated.

The only changes made by the Supreme Court in the decree of the District Court, was the reduction of the attorney's fee from \$5,000.00 to \$3,586.97, and the master's fee was reduced from \$1,000 to \$500.

The master, and the decree of the District Court, expressly found against the contention of the cross-appellant, as made by his first assignment of error. See Master's eighth finding, record, page 74. Decree of District Court, record, folios 346-347. No exception was filed to the master's report on this account. See cross-appellant's exceptions, record, page 207. No appeal was taken from the District Court.

The same thing is true of the cross-appellant's second assignment of error. Same references to the record.

There was an exception to the finding of the master as to the commissions, which was practically sustained by the District Court, and, afterwards the Supreme Court followed the District Court in allowing commissions and taxing them against the whole estate. The District Court by its decree did exactly what the cross-appellant complains of here, and no appeal was taken from the District Court to the Supreme Court. According to the decisions above cited this Court can not consider this assignment of error. The master

said the interest account and did not charge compound interest. Both the District Court and the Supreme Court followed the master in this respect. See Master's Findings, five and six, record, pages 73-4. Decrees, record, folios 346, 364. No exceptions to the master's report was taken on this account, and no appeal from the District Court.

IV.

It follows, that as the cross-appellant's assignments of error are not based upon any exceptions to the master's report, and no appeal was taken from the District Court, they cannot be considered in this Court. They are not based on any modification of the decree of the District Court by the Supreme Court. Therefore, the only standing the cross-appellant has in this Court is to sustain the decree of the Supreme Court. This would be true even if he had perfected his cross-appeal. The Supreme Court of New Mexico in the opinion rendered in this case recognized the principle, that it is too late to assert in the appellate court a right which had not been recognized in the court below.

This is fundamental. The cross-appellant should certainly have given the Supreme Court of the Territory an opportunity to correct any errors of the District Court by calling their attention to them before he can ask this Court to do so. He should certainly have given the District Court an opportunity to correct any errors of the master, by filing exceptions to his report.

V.

It clearly appears that no cross-appeal has ever been perfected in this court. The burden of proof of the amount in controversy to establish the jurisdiction is upon cross-appellant. It may or may not be true that

the assignments of error by the cross-appellant raise questions involving as much as \$5,000.00, exclusive of costs. No affidavit was filed; no security for costs given. Nothing has been done, except that the court below has made an order granting the cross-appeal. This is not perfecting it in the same manner as the statute requires an appeal to be perfected.

VI.

The cross-appellee, by the contention above made, does not mean to concede that there is any merit in any of the assignments of error made by the cross-appellant. He insists that there is not in any of them any merit whatever. The first assignment of error, if based upon a construction of the statute of New Mexico, cross-appellee is ready to argue has no merit whatever: if it is based upon the proposition that the Court is limited to the findings of fact made by the Supreme Court of New Mexico, that it is equally without merit.

In case of an appeal from a Territory, under the act of 1874, this Court said:

"Under this act if the findings of the District Court are sustained by the Supreme Court, and a general judgment of affirmance rendered, the findings of the District Court, thus approved by the Supreme Court, will furnish a sufficient 'statement of the facts in the case' for the purpose of an appeal to this court."

Stringfellow vs. Cain, 89 U. S. 612.

The decree of the District Court, that of the Supreme Court, as well as the master's findings, are against the cross-appellant on his first assignment of error. The same thing is true of the second and fourth assignments of error. The principles involved in the second assignment have been considered fully in the

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brief filed by the cross-appellee on his appeal. The same thing is true as to the fourth assignment of error, and we submit that no authority has been cited by the cross-appellant which would justify the charging against the defendant of compound interest under the circumstances of this case.

We respectfully submit that the cross-appeal should be dismissed.

WM. B. CHILDERS,
Solicitor for Appellee.

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HARRISON v. PEREA.

PEREA v. HARRISON.

APPEALS FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

Nos. 118, 497. Argued November 10, 11, 1897. — Decided November 29, 1897.

When the defendant's answer in a chancery suit sets up matters which are impertinent, and he also files a cross bill making allegations of the same nature, a demurrer to the cross bill on that ground should be sustained. The findings of fact in an appeal from the Supreme Court of a Territory are conclusive upon this court, whose jurisdiction on such appeal, apart from exceptions duly taken to rulings on the admission or rejection of evidence, is limited to determining whether the findings of fact support the judgment.

It being found that the defendant converted the entire assets which are the subject of this controversy, there was no error in charging him with interest on the amount so converted, without regard to whether he did or did not make profits.

The solicitor was properly allowed a fee from the fund.

An item in the decree below which was not appealed from by the complainant is not before this court for consideration.

A clerical error in the decree of the court below caused by the omission of the name of one of the distributees, can be corrected, on application, by the court below after the case is sent down.

The costs in this court must be paid by Harrison personally.

THE bill in the first above entitled suit was filed in a District Court of the Territory of New Mexico, in chancery, by Pedro Perea, as sole surviving administrator of the estate of José L. Perea, Second, deceased, and as one of his heirs-at-law, against the defendant, George W. Harrison, individually and as administrator of the estate of his wife, Guadalupe Perea de Harrison, and also against the other heirs-at-law of José L. Perea, Second. It was brought to compel an accounting by the defendant George W. Harrison, individually and as administrator of the estate of his wife, for the property and assets of the estate of José L. Perea, Second, which had come into his hands.

The bill in substance alleged the following facts: José

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Perea, Second, a resident of New Mexico, died in that Territory on the 27th of August, 1887, being about the age of eight years. He left him surviving his mother, Guadalupe Perea, who was then a widow, and his half brothers and sisters as his heirs-at-law. On the 23d of July, 1884, his mother had been appointed his guardian and had taken possession of his property. In September, 1885, she married the defendant George W. Harrison. She continued guardian of her son up to his death, in August, 1887. In September, 1887, the complainant was appointed administrator and the mother was appointed administratrix of the estate of the minor. They both gave bonds and took the requisite oaths. On the 6th of March, 1888, the mother made what she termed a final report of her guardianship to the probate court, which showed a balance of over seventeen thousand dollars in her hands belonging to the estate of the minor. Under the influence of her husband she claimed, from the time of her son's death down to her own decease, to hold the property as guardian and not as administratrix, and while acting under that influence she refused to permit the complainant, after his appointment as administrator, to assist in the administration of the estate, or to have possession or control over any of its assets. Objections were made by the complainant to the report filed by the mother in March, 1888, called the guardian's final account, and these objections were sustained by the probate court. An appeal from that order was taken by the mother, but no further proceedings were had therein, and the same was practically abandoned. The mother died October 20, 1889. Her husband then unlawfully took possession of the property of the minor in her hands at the time of her death, and subsequently and on the 6th of January, 1890, he took out letters of administration on her estate, she dying intestate. He then claimed to hold the estate of the minor by reason of being administrator of his wife's estate. He took possession of the minor's estate individually, with full knowledge of its trust character, placed it to his own credit in bank, mingled it with his own funds, and claimed the right to retain possession and control thereof, and refused the demand to pay over the estate to him, which

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the complainant made in his capacity as sole surviving administrator of the estate of the minor. It was also alleged that the mother of the deceased minor, acting under the influence and by the direction of her husband, and the defendant Harrison himself, individually, did by their actions cause great damage to the estate of the minor, and relief was demanded against the defendant Harrison as administrator of his wife's estate, and individually for an accounting in relation to the estate of the minor, of which he was in possession, and for a recovery of the amount found to be in his possession.

The defendant Harrison demurred to the bill, his demurrer was overruled, and he then answered both individually and as administrator of the estate of his deceased wife. In that answer the defendant denied many of the material allegations contained in the bill. He alleged that he and the defendant Grover William Harrison, who was minor child of himself and his deceased wife, Guadalupe Perea de Harrison, had succeeded to all the interest and rights of his said wife in and to the property of the estate of José L. Perea, Second, and for that reason the complainant was not entitled to a decree for anything upon the accounting. The answer also alleged that the complainant was a son and also one of three administrators of the estate of the late José L. Perea, Senior, (two of complainant's brothers being the other administrators,) and that those administrators had failed to account for a large sum of money which was due from the estate of José L. Perea, the elder, to José L. Perea, Second, in his lifetime, and afterwards to his estate; and it was alleged that large amounts of property had come into the hands of such administrators of the estate of the deceased father, José L. Perea, Senior, of which no account had been made, and that the *pro rata* share of the minor, José L. Perea, Second, in these assets so unaccounted for would amount to thirty thousand dollars.

The complainant excepted to so much of the answer as contained the above allegations relating to the estate of the elder Perea and the action of the administrators with regard thereto, upon the ground of impertinence.

The defendant, by leave of court, also filed a cross bill, in

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which in very great detail he set forth the condition of the estate of the elder Perea and the action of the administrators thereof. Among other things it was alleged that the elder Perea in 1842 married his first wife and they lived together until 1877, when she died; that he had by her six daughters and six sons, and that he brought into the marriage community a large amount of property, real and personal, amounting to a hundred thousand dollars, acquired by him by inheritance, bequest and other means, and in addition personal property of the value of about three hundred thousand dollars, and that at the time of his marriage his wife owned in her own right and brought into the marriage community real property situate in the Territory of New Mexico of the value of thirty thousand dollars and personal property of the value of thirty thousand dollars; that this property of the husband and wife became upon their marriage property of the marriage community, and so continued to remain the property of the parties, to which large accretions and additions were made by the industry and labor of the husband and wife, so that at the time of the death of the wife in 1877 the full value of the united property was three hundred thousand dollars of realty and five hundred thousand dollars of personalty, and that all of this property, except the amount brought into the marriage community, was gain and increase of that property and belonged in equal parts to the husband and wife.

It was further alleged that in 1883 the elder Perea died, and that his estate had not been properly administered; that property belonging to the estate had not been inventoried as such; that the conduct of the administrators had been wasteful, the estate had not been properly taken care of, and that the administrators had expended large amounts of the community property in the purchase of real property, so that such property had been unlawfully converted into worthless real property. It was also alleged that a pretended settlement had been made before the probate judge in New Mexico, and the administrators had made an accounting before the court, and had obtained their discharge and the cancellation of their bonds by that court; that this settlement before and discharge

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by the probate court was a fraudulent one and fraudulently obtained, and that the decree should be set aside. It was also alleged that the defendant Harrison and his wife had before her death commenced a suit against the complainant and the other defendants who were administrators of the estate of the elder Perea, asking for an accounting in regard to the identical matters and things set up in this cross bill; and that such suit was still pending and undetermined at the time of the commencement of this suit by the complainant herein.

Various other matters in relation to the management of the estate of the elder Perea were set forth in the cross bill at very great length, and relief was demanded in accordance with what was alleged to be his rights by such complainant. This relief was of all varieties, including an investigation into accounts and matters relating to community property arising out of the marriage of the elder Perea in 1842, and an inquiry as to what was such property and its proper increase; also injunctions, accountings, decrees for conveyance, for distribution, for removal of the administrators; for the annulling of the pretended and fraudulent decree discharging the administrators and finally settling their accounts, and for the appointment of a receiver of the estate of the elder Perea.

To this cross bill the complainant herein demurred upon several grounds, the substance being that it was multifarious in that it was brought in regard to matters having no connection with the subject-matter of the original bill, and not proper to be investigated in this suit.

The exceptions to the answer and the demurrer to the cross bill were argued at the same time, and, after hearing counsel, the court allowed the exceptions and struck out the matter excepted to, and it also sustained complainant's demurrer to the cross bill.

The case then being at issue was duly referred to a master, before whom both parties appeared and introduced their proofs, after which the master made his report. Upon that report and the evidence taken before the master, the case was brought to a hearing, and the court found in substance that the allegations set forth in complainant's bill were true. The

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court also found that José L. Perea, Senior, died about the 21st day of April, 1883, and left his widow, Guadalupe Perea, (who afterwards married the defendant George W. Harrison,) and the other defendants in this suit, with the exception of George W. and Grover William Harrison, his heirs-at-law. José Perea, Second, was the son of the elder Perea by his second wife, Guadalupe Perea. After the death of the elder Perea, his widow married, as heretofore stated, the defendant George W. Harrison, and by him she had issue, Grover William Harrison, one of the defendants herein. With these exceptions all of the defendants were children of the elder Perea by a former wife. Pedro, Mariano and Jesus M. Perea were appointed administrators of the estate of their deceased father.

The court also found that the defendant George W. Harrison, not only upon the death of his wife had control, but that immediately after their marriage he took control and charge of the assets of the deceased minor, and at the time of the entry of the decree herein he still retained and had possession of all the moneys belonging to that estate, and that they were subject to his individual control.

At the time of the death of the minor he owed no debts and there were no charges against his estate except his funeral expenses and the expenses of his last illness and certain claims for his maintenance by his guardian. The defendant George W. Harrison, in the name of his wife and in her lifetime, made sundry reports to the probate court as to the condition of the estate, some of which contained false entries to her advantage, and together they obstructed the distribution of the estate among the heirs.

The court also found that George W. Harrison, the defendant, wilfully obstructed the distribution of the assets of the estate of the minor, and by his misconduct rendered it necessary that the complainant should obtain possession of the assets by the institution of this suit, and that the necessity for this suit arose entirely out of the wrongful conduct of the defendant Harrison.

The amount found due from the defendant to the com-

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plainant was stated in the decree to be, with interest up to the date of the entry of the decree, June 19, 1893, the sum of \$31,545.32, of which the defendant Harrison was entitled as administrator of the estate of his late wife, Guadalupe Perea de Harrison, to thirteen twenty-sixths, and to three twenty-sixths in addition by reason of the purchase of the interests of some of the heirs of the estate of José L. Perea, Second, and to one twenty-sixth more, as guardian of Grover William Harrison, one of the defendants, being a total of seventeen twenty-sixths; and the other heirs were each decreed entitled to one twenty-sixth of such balance; and it was provided in the decree that the defendant Harrison might, instead of turning over to the complainant, the administrator of José Perea, Second, the full sum found due, retain the amount found due him from the estate, which was stated to be the sum of \$16,227.19. The defendant George W. Harrison was also charged with the payment of the costs of the suit individually, including the sum of one thousand dollars allowed the special master.

From the final decree thus entered the defendant George W. Harrison appealed to the Supreme Court of the Territory of New Mexico, which court, with some modifications, affirmed the judgment of the court below. Those modifications consisted in charging interest upon the full amount of the sum found due by the decree of the court below, from the time of the entry of that decree up to the 26th of August, 1895, which amounted to the sum of \$4324.45, and the defendant was charged in the decree of the last named date with the full sum of \$35,869.77. The fee for the solicitor of complainant was reduced from \$5000 to \$3586.97, being ten per cent upon the amount found in the hands of the defendant Harrison. The complainant, as administrator, was decreed to be entitled to the statutory commission upon the last named sum found by the court to be due from the defendant Harrison, which commission amounted to \$1943.48. The court also reduced the compensation of the special master from \$1000 to \$500. The court also modified the decree against Harrison for the payment of costs individually, by directing "that the

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said solicitor's fee, the said commission for said administrator, the said special master's fee, and all of the costs of this case in this court and in the court below, should be paid out of said fund, and that of the remainder the said defendant George W. Harrison may retain in his possession seventeen twenty-sixth parts thereof, and that he shall pay over to said Pedro Perea, as administrator of José L. Perea, deceased, the remaining nine twenty-sixths, to be distributed to the heirs at law of said José Leandro Perea, Second," as directed by the court. From the judgment of affirmance as modified the defendant George W. Harrison has appealed to this court. The complainant also took a cross appeal from the judgment.

Mr. William B. Childers for Harrison.

Mr. Neill B. Field for Perea.

MR. JUSTICE PECKHAM, after stating the case, delivered the opinion of the court.

The question first arising in this case is in regard to the correctness of the decisions of the courts below in allowing complainant's exceptions to portions of the answer of the defendant Harrison and in sustaining the demurrer to defendant's cross bill. The decision of the two matters rests in this case upon essentially the same foundation. If the allegations of the defendant's answer to the original bill are impertinent, it would follow that in this case the cross bill would be multifarious, and that the demurrer on that ground should be sustained. The allegations in the two pleadings are of the same nature, only in the cross bill they are very greatly extended and set forth in almost infinite detail.

Impertinence is described by Lord Chief Baron Gilbert to be: "Where the records of the court are stuffed with long recitals, or with long digressions of matter of fact, which are altogether unnecessary and totally immaterial to the matter in question." 1 Daniell's Chancery Pl. & Pr., (5th Am. ed.) marginal paging, 349. It is also said that impertinence is the introduction of any matters in a bill, answer or other pleading

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in the suit which are not properly before the court for decision at any particular stage of the suit. *Wood v. Mann*, 1 Sumner, 578. "The best test to ascertain whether matter be impertinent is to try whether the subject of the allegation be put in issue in the matter in dispute between the parties." All matter not material to the suit is regarded as impertinent. *Woods v. Morrell*, 1 Johns. Ch. 103; 1 Daniell, *supra*, 349, note.

As to multifariousness, it was said in *Shields v. Thomas*, 18 How. 253, 259: "There is, perhaps, no rule established for the conducting of equity pleadings, with reference to which (whilst as a rule it is universally admitted) there has existed less of certainty and uniformity in application, than has attended this relating to multifariousness. This effect, flowing, perhaps inevitably, from the variety of modes and degrees of right and interest entering into the transactions of life, seems to have led to a conclusion rendering the rule almost as much an exception as a rule, and that conclusion is, that each case must be determined by its peculiar features. Thus Daniell, in his work on Chancery Practice, vol. 1, p. 384, quoting from Lord Cottenham, says: 'It is impossible, upon the authorities, to lay down any rule or abstract proposition, as to what constitutes multifariousness, which can be made universally applicable. The cases upon the subject are extremely various, and the court, in deciding upon them, seems to have considered what was convenient in particular cases, rather than to have attempted to lay down an absolute rule.'" Continuing his opinion, the learned justice in the above case said: "Justice Story, in his compilation upon equity pleading, defines multifariousness in a bill to mean 'the improperly joining in one bill distinct and independent matters, and thereby confounding them.' . . . Justice Story closes his review of the authorities upon this defect in a bill with the following remark: 'The conclusion to which a close survey of the authorities will conduct us, seems to be, that there is not any positive inflexible rule as to what, in the sense of a court of equity, constitutes multifariousness, which is fatal to a suit on demurrer.'"

Upon consideration of the various cases, we think that in

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allowing the exceptions to the answer and in sustaining the demurrer to the cross bill, the courts below committed no error. The facts which the defendant Harrison endeavored to set up in his answer and cross bill were not relevant to the matters properly in issue in this suit. Neither the convenience of the parties nor their rights in regard to the matters set forth in the original bill would be aided by entering upon an inquiry relating to the matters set up in the answer and cross bill. It is clear that an investigation and accounting, such as is asked for in the cross bill, would take a long time, probably many years, to finish, involving as it would an inquiry into the amount of the community property of the elder Perea and his wife in 1842, and what should be found to be the actual increase springing from the same; also an inquiry into the transactions of the administrators of the estate of the elder Perea and into their liability on account of the same, together with the taking of evidence upon the subject of the fraudulent character of the decree of the probate court discharging the administrators of that estate. It would in addition include an inquiry into the question whether the administrators, if the decree were set aside, had been guilty of such conduct in the care and management of the estate coming into their hands as would make them liable for any loss sustained by the estate in consequence of such action. In fine, it is seen that the character of the investigation demanded by the cross bill and of the relief sought thereby is extensive enough to call for an almost interminable amount of research and labor. These considerations are not of the slightest moment when weighed against the legal rights of the parties interested in the question; and their right to have such investigation made and adequate and proper relief granted is not a matter of discretion or of favor. If they have not slept upon their rights and if they come into court at the proper time and in a proper action, the court will enter upon the necessary investigation and grant such relief as they may be entitled to. On the other hand, these considerations are most material and vital upon the question of the necessity or propriety of such an investigation in this suit which was

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brought for a different purpose, and which would be necessarily greatly delayed in its termination if such an inquiry should be now entered upon.

Let us look for a moment at the simple character of this suit. It is brought to recover as administrator the assets of the estate of the minor already mentioned, the possession of which the defendant Harrison does not deny. He shows no right to them as against the complainant, because the facts he sets up in his answer form no defence. Nor do the same facts when set forth in the cross bill constitute a cause of action against this complainant, proper to be proved and defended against in this suit, as against the demand of the complainant herein. It is plain that the complainant, as the surviving administrator of the estate of the deceased minor, was entitled to the immediate possession of all the assets of such estate. Upon the death of the minor the guardianship of the mother ceased, and as she was thereupon appointed administratrix, her continuing to hold the assets of the estate from the time of such appointment was as administratrix and not as guardian. The counsel for Harrison says in his brief that he is disposed to concede this proposition. It is plainly true. Her right or duty to account, as guardian, did not affect the title to the property upon the death of the ward. That title became vested in the administrator and administratrix upon their appointment. 1 Williams on Executors, (6th Am. ed.) 696. The plaintiff herein, as coadministrator, had the same legal title to the assets that she had. The advantage of possession was with her. But on the death of the administratrix the complainant remained the sole surviving administrator, and in him was vested the exclusive title and the right to the immediate possession of the assets of the estate of the deceased minor. Instead of obtaining that possession he finds all the assets in the hands of the defendant Harrison, who refuses to give them up. Their amount is not really in controversy. The defendant shows no right or title whatever to them. It is no answer to the demand that the defendant should pay over the sum which is in substance acknowledged to be in his possession, to say that the

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minor's estate may be increased after an accounting shall be had and judgment obtained and the money paid over in the matter of the estate of the elder Perea. The claim upon that estate, so far as the defendant Harrison is concerned, either individually or as administrator of his deceased wife, is altogether too remote and too disconnected from the issues properly joined in the original suit herein to make it necessary, on his demand, to turn aside from their decision until that claim shall be hereafter and in this suit determined. It would be entering upon an investigation into matters connected with a different estate, an inquiry into which would involve innumerable questions which would have no bearing upon the decision as to the right of defendant to retain these particular funds now in his individual possession and treated by him as his own.

It must also be borne in mind that the defendant Harrison has an action pending against the complainant herein and the other and surviving administrator of the estate of the elder Perea, together with his other heirs-at-law, in regard to these very matters which are set up in his cross bill herein. Indeed, this cross bill contains nothing material beyond the allegations which are contained in the complaint in his first suit. The allegations in that suit are reintroduced in the cross bill word for word, and the relief prayed for in the cross bill is the same. From all the facts thus appearing in complainant's original bill, in the answer and the cross bill of the defendant Harrison, it is plain that the matters set up in the answer and in the cross bill in regard to which the defendant seeks investigation in this suit are not proper subjects of inquiry herein, because not connected with the issues sought to be decided in the original bill, and it would result in great and unnecessary delay in the decision of this suit to reverse this judgment and direct an investigation into matters which are foreign to its merits. We are of opinion the court below committed no error in allowing complainant's exceptions to the answer and in sustaining his demurrer to the cross bill.

The decision thus arrived at includes the main question in the case. There are some few other matters to be reviewed.

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Our further examination must proceed upon the finding of facts as made by the court below, for this being an appeal from the Supreme Court of a Territory those findings are conclusive upon this court. The jurisdiction of this court on such an appeal, apart from exceptions duly taken to rulings on the admission or rejection of evidence, is limited to determining whether the findings of fact support the judgment. *Stringfellow v. Cain*, 99 U. S. 610; *Neslin v. Wells*, 104 U. S. 428; *Eilers v. Boatman*, 111 U. S. 356; *Idaho and Oregon Land Company v. Bradbury*, 132 U. S. 509; *Mammoth Mining Company v. Salt Lake Machine Company*, 151 U. S. 447, 450; *Haws v. Victoria Copper Mining Company*, 160 U. S. 303; *Gildersleeve v. New Mexico Mining Company*, 161 U. S. 573; *Bear Lake and River Water Works and Irrigation Company v. Garland*, 164 U. S. 1, 18.

Objection is made to that portion of the decree which holds the defendant Harrison liable as an individual for the repayment of the amount of the assets of the estate found in his possession. The findings of fact amply justify this action of the court. It is found that immediately upon the intermarriage of the defendant Harrison with the widowed mother of the minor he took entire charge and control of her affairs, including the assets of the minor's estate; that he reduced them to money, mingled the same with his own funds, deposited them in bank to his individual credit and at the time of the final decree he retained the same subject to his individual control. The court also found that he made reports in the lifetime of his wife, and in her name to the probate court, which contained false entries to the advantage of his wife, and that together they obstructed the distribution of the estate among the heirs; that upon the death of his wife on the 20th of October, 1889, he was in possession of these assets with full knowledge of their trust character, and after her death he refused to pay over on demand, to the complainant as the sole surviving administrator of the estate of the minor, the assets pertaining to that estate. These facts show a persistent, deliberate and successful attempt to secure and retain the assets of this estate and to convert them to his own use

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individually. The facts found show that he was guilty of such conversion. Cases are cited by defendant's counsel where payments wrongfully made by an administrator to a third person could not be recovered directly from such third person at the suit of a creditor of the estate, the estate itself not being insolvent. Those cases and the one at bar have no resemblance to each other. This is a case where the whole assets of the estate have been wrongfully and knowingly taken and converted to the individual use of this defendant, and the action is brought to recover the same by the sole surviving administrator of the estate. Nor is it a question of following the specific property which was taken by the defendant. The finding is that he reduced the assets and property of the estate to money and mingled the same with his own funds, and has kept control of them ever since. The question of identification has nothing to do with the case. It is a bald case of the conversion of the whole estate of the minor, and his liability to pay it back is plain and clear.

Nor did the court below err to the prejudice of the defendant in the matter of charging him with interest at six per cent on the amount of the assets converted by him. The interest is charged by reason of his conversion of the whole assets of the estate. It is not a mere mingling of the funds with his own, while recognizing his liability to repay them and having them at the same time ready to respond when demanded. It is a wholesale conversion of the entire assets. The facts found make the inference perfectly clear that such conversion was intended from the time of his marriage with the mother of the minor. His false entries in the reports are very strong evidence in that direction.

Neither is it a question of what profits (if any) have been made by an individual who has mingled trust funds with his own and used them for his personal benefit, although never denying his liability to account. In such cases it is sometimes proper to inquire what profits have been made in order to charge the trustee with their amount, if greater than the usual rate of interest. This is not such a question. The defendant has, without the least right or title, taken moneys

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belonging to the estate of a deceased minor, and converted them substantially to his own use, while denying the right of the administrator of such estate to the possession thereof. He is properly charged, at least, with the usual interest without investigation into the question of what profits he may have made.

That portion of the decree which authorizes the complainant as administrator to retain his statutory commissions upon the full fund found due from the defendant is objected to, and the claim is made that he is not entitled to commission on any other sum than that which he actually receives and pays out. The decree determines the amount due from the defendant to the complainant as administrator. Strictly speaking, the complainant was entitled to a decree for the payment of that full sum by the defendant, after which he would be paid the distributive share legally coming to him. If that course had been followed and such a decree given, the complainant would have been entitled to his statutory fees, as administrator, upon the amount thus paid in; but by the favor of the court, the defendant Harrison was permitted, instead of making this formal payment, to retain in his possession the seventeen twenty-sixths of the estate which the court decided he would be entitled to receive from the administrator, upon his making distribution of such estate to the parties entitled to it. The court in pursuance of this course did not relieve the estate from the payment of the full amount of the commissions of complainant as administrator which he would have been entitled to, had the amount which the defendant retained been actually and physically paid over into his hands. As to this, the defendant has no good ground of complaint.

The defendant also objects to the allowance of the solicitor's fee which is charged against the fund. We think no error arises from this action of the court below. By the exertions of the solicitor the fund was recovered, and it was properly made to bear some portion of the expense of its administration. The amount was within the judicial discretion of the court, and in fixing that amount the trial court could proceed upon its own knowledge of the value of the solicitor's services.

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Trustees v. Greenough, 105 U. S. 527; *Fowler v. Equitable Trust Co.*, 141 U. S. 411, 415.

These are substantially all the questions which arise upon the appeal of the defendant Harrison.

Upon the cross appeal of the complainant he seeks to modify the judgment of the Supreme Court in regard to the parties to the distribution, as he claims that the fund should be distributed, one half to the administrator of the deceased mother of the minor and the other half among his twelve half brothers and sisters, (children of the minor's father,) to the exclusion of the minor's half brother, Grover William Harrison, (the son of his mother by her husband Harrison,) who by the judgment of the court is permitted to share in such distribution. As the trial court made that decree and the complainant did not appeal from it, and the Supreme Court has simply affirmed that provision, the complainant's appeal from the latter decree does not, in our opinion, bring up this question for review. All that the complainant could claim in the Supreme Court was the affirmance of the judgment as given in the court below, because, as he had not appealed from it, he could not be heard to ask for its modification or reversal. When the Supreme Court affirmed that provision of the decree the complainant's appeal from that court would not bring the propriety of the provision for distribution before us.

Upon his cross appeal the complainant also asks for a modification of the decree with regard to the rate of interest charged against defendant, claiming it ought to be 12 instead of 6 per cent. We cannot interfere with the rate charged in the original decree, because the complainant has not appealed therefrom, and we do not think we ought to interfere with the rate of 6 per cent charged by the Supreme Court upon the total amount of the original decree from the time it was entered. It was to a certain extent discretionary with the latter court, and we think we are not called upon to alter and increase the rate charged by that court.

Although the complainant herein did not appeal from the original decree entered by the trial court, yet upon defendant Harrison's appeal therefrom the Supreme Court modified the

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decree in some particulars, and specially in regard to costs, charging them upon the fund instead of against the defendant Harrison individually, as was the decree below. This was a modification of the judgment against the interest of and unfavorable to the complainant herein, as it reduced the amount of the fund for distribution. This question can be reviewed upon the complainant's cross appeal. We are of opinion that there was no proper ground for the modification of the decree as to costs made by the trial court.

The defendant Harrison, by the finding of the court, has wilfully obstructed the distribution of the assets of this estate, and by his misconduct has rendered it necessary that the complainant should obtain possession of them by the institution of this suit, and the necessity for commencing it arose entirely out of his wrongful conduct. This is the finding as approved by the Supreme Court of the Territory. The other findings, showing the false accounts, the wrongful conversion of these moneys, and the wrongful and persistent refusal to pay them over, on demand made by the administrator, altogether make out a gross case against the defendant, and leave no reasonable foundation for permitting him, as the Supreme Court does, to defend this action entirely at the expense of the fund and with no personal responsibility for costs. We see no plausible ground for this privilege.

A clerical error seems to have been made in the distribution by the Supreme Court. One twenty-sixth part of the estate is undisposed of by the judgment. It provides for the payment of seventeen twenty-sixths to defendant Harrison, and distributes the remaining nine twenty-sixths, one ninth to each of *eight* named distributees. One name has been accidentally omitted. This can be corrected on application by the court below.

The provision making all the costs payable out of the fund cannot stand, and the decree should charge defendant Harrison with costs personally as in the original decree entered by the trial court, with the exception that the amount of the fee of the special master is retained at \$500. All the costs in this court must be paid by the defendant Harri-

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son personally. The decree of the Supreme Court of New Mexico is therefore

Reversed on the cross appeal of Perea, and the cause remanded with instructions to enter judgment in conformity with this opinion, with liberty to change the distribution upon application if it shall appear proper.